Appendix A
Correspondence with Federal, State and Local Agencies (Consultations)

LIST OF AGENCIES CONSULTED

Ms. Dorinda Scott
Wildlife Diversity Program
Texas Parks and Wildlife Department
3000 S. IH-35, Suite 100
Austin, TX 78704

Tom Cloud
Field Supervisor
U.S. Fish and Wildlife Service
711 Stadium Drive E
Suite 252
Arlington, TX 76011
817-277-1100
Fax: 817-277-1129

Ms. Maria Hascall
Deputy Commissioner, Field Operations
Texas General Land Office
1700 N. Congress Ave., Room 720
Austin, TX 78701-1495

Mr. John P. Burt
State Conservationist
Natural Resource Conservation Service
101 South Main
Temple, TX 76501-7682

Darnell Willis
Natural Resources Manager
USDA-NRCS
Decatur Field Office
1604 West Business 380, Suite B
Decatur, TX 76234-5228

Mr. Danny Allen
Habitat Assessment Branch
Texas Parks and Wildlife Department
4200 Smith School Rd.
Austin, TX 78744

Ms. Linda Howard
Manager, Planning & Programming
Texas Department of Transportation
Department of Aviation
125 E. 11th Street
Austin, TX 78701-2483

Dr. Tommy Knowles
Deputy Executive Administrator for Planning
Texas Water Development Board
1700 N. Congress Avenue
Austin, TX 78701

Mr. Wayne A. Lea
Chief, Regulatory Branch
U.S. Army Corps of Engineers
P.O. Box 17300
819 Taylor St.
Ft. Worth, TX 76102-0300

Mr. William L. Cox
Chief, Federal Assistance Section, 6E-FF
U.S. Environmental Protection Agency, Region 6
Federal Center, 800 N. Loop 288
Denton, TX 76201-3698

Ms. Dianna Noble
Director, Division of Environmental Affairs
Texas Department of Transportation
125 East 11th Street
Austin, TX 78701-2483

Mr. Dan Pearson
Executive Director
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, TX 78711-3087

Mr. L.B. McDonald
Wise County Judge
P.O. Box 393
Decatur, TX 76234

Mr. Brett Shannon
City Administrator
P.O. Box 1299
Decatur, TX 76234

Tom Ferguson
Chico ISD
P.O. Box 95
Chico, TX 76431

Kenneth Manning
Chico ISD
P.O. Box 95
Chico, TX 76431

Ms. Denise S. Francis
State of Texas, Single Point of Contact
Governor's Office of Budget and Planning
P.O. Box 12428
Austin, TX 78711

Mr. William D. Shaddox
National Park Service
1849 C Street, NW
Washington, DC 20240

Lawrence Oaks, SHPO
Texas Historical Commission
P.O. Box 12276
Austin, TX 78711-2276

Railroad Commission of Texas
Mr. Gene Acura
Director of Public Information/TRACS Contract
1701 North Congress
Austin, TX 78711

North Central Texas Council of Governments
Ms. Lucile Johnson
TRACS Coordinator
P.O. Box 5888
Arlington, TX 76005-5888

Mr. Noble Tucker
Mayor
City of Chico
P. O. Box 37
Chico, TX 76431

Sample Agency Consultation Letter

April 3, 2001

«Title» «FirstName» «LastName»
«Company»
«Address1»
«City», «State» «PostalCode»

RE: STB Finance Docket 34002 - Request for Comments/Consultation on Proposed New Railroad Line in Wise County, Texas

Dear «Title» «LastName»:

Alamo North Texas Railroad Corporation (Alamo North), a recently formed Texas railroad corporation, proposes to build and subsequently operate a new, approximately two-mile, common carrier rail line in Wise County, Texas for the transportation of stone from the Chico quarry. Alamo North plans to file a petition with the Surface Transportation Board (Board) to construct and operate this line. Because this petition constitutes a federal action under the National Environmental Policy Act of 1969 (NEPA), the Board's Section of Environmental Analysis (SEA) is required to conduct an environmental analysis for the proposed project. URS Corporation has been retained as the independent third-party consultant pursuant to the Board's regulations at 49 CFR 1105.10(d), and will be working with SEA to prepare the environmental document.

Attached to this letter is a brief description of the proposed action and its alternatives that are being evaluated, including a map of the affected area. Please provide us with any comments you have on the proposed action as well as the alternatives being considered. We will need your comments by April 27, 2001.

Send your comment letters to:

Jaya Zyman-Ponebshek
URS Corporation
P.O. Box 201088
Austin, TX 78720-1088

For more information related to this proposed action you may contact me at (512) 419-5316 or Rini Ghosh at (202) 565-1539, the SEA contact at the Board.

Thank you for your assistance.

Sincerely,

Jaya Zyman-Ponebshek
Project Manager

Enclosures

URS

SUMMARY DESCRIPTION OF PROPOSED ACTION AND ITS ALTERNATIVES

Background

Alamo North Texas Railway ("Alamo North"), a recently formed Texas corporation and a subsidiary of Martin Marietta Materials Southwest, Ltd. (MMM Southwest), proposes to build and subsequently operate a new common carrier line in Wise County, Texas about 50 miles northwest of Ft. Worth. The line will extend approximately two miles from a connection with the Union Pacific Railroad (UP) to a stone quarry in Chico, Texas operated by Alamo North's parent (MMM Southwest). MMM Southwest's quarry has been in operation for 14 years. It produces limestone, which is used for road and other construction projects.

The line is being constructed primarily to serve the MMM Southwest stone quarry in Chico, Texas, but will also be available to serve any other nearby industries, including other quarries, in the future.

Proposed Action

The proposed rail line would require a single-track extending westward across existing woods and pasturelands to connect to the Chico quarry, as shown in the attached map. The area is mostly rural with extensive surface mining and oil and gas production activity. Most of the right-of-way would be on land leased by MMM Southwest, including a tract (Dvorken tract) on which MMM Southwest plans to develop a new quarry. The line would not traverse any residential or recreational areas. The proposed route would cross only one small drainage feature with intermittent seasonal flow. To date, the quarry's entire product has been trucked from the quarry to customer locations, primarily in the Dallas-Ft. Worth area. Truck transportation of stone products, however, becomes increasingly inefficient and uneconomical for distances much over 50 miles. Ninety percent of the quarry's customers are within 70 miles of the quarry.

MMM estimates that when the rail line is complete, there would be a 10 percent reduction in truck traffic. Currently, the Chico Quarry produces 4 million tons per year of stone. When the rail line is operational, the production from the existing and new quarry will be 6 million tons per year.

Alternatives

The route of the proposed rail line is the shortest route between the existing quarry and the UP line. Alternative routes of the line are possible, but they would be longer than the proposed route, would interfere more with the proposed quarry operations, and would, if anything, have greater environmental impacts than the proposed route because of their greater distances. Three alternative routes to the proposed route were considered:

- Alternative Route 1 would utilize the same initial proposed line (northern most area of Dvorken property) with the exception that the line would turn south, southwest and following the outermost eastern area of the current mining boundaries adjacent to the county road and then turn in a westerly direction for approximately 3,500 feet.

- Alternative Route 2 would virtually split the Dvorken property (most of the eastern half of the proposed route) in half and would run for approximately 5300 feet in a westerly direction and then would begin to turn in a southwesterly direction before finally returning to a westerly direction at the southern most end of the current mining area for approximately 3,500 feet.

- Alternative Route 3 would place the line in an area outside the Dvorken property located approximately 1,700 feet due north of the northern most boundary of the Dvorken property. The line would run due west for approximately 10,000 feet.

One of the main advantages of the proposed route is that it supports the greatest access to Dvorken reserves. Another major advantage is that it places the track in close proximity to crushing operations. Finally, the proposed alternative also requires fewer track feet.

Alternative means of transporting quarried materials to the Union pacific line were also considered. A conveyor alternative was considered but rejected due to the economic cost of building and maintaining the several miles of belts, idlers, and idler tables.

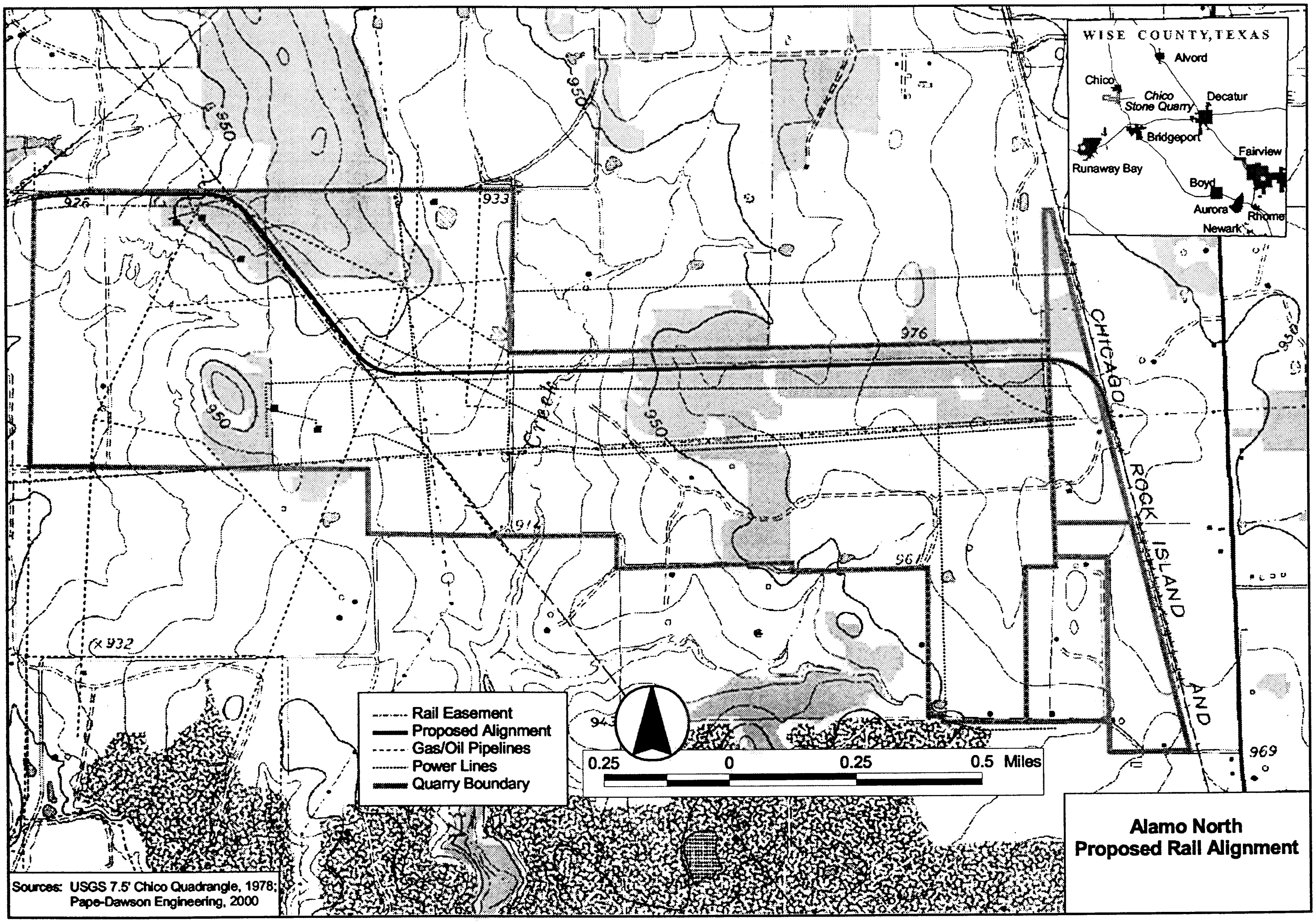
The "no-build" alternative would economically prohibit the quarry expansion and would reduce the opportunity of capitalizing on the rail distribution network and attracting continued capital investment through the development of these growth opportunities.

The environmental document will discuss these alternatives and the reasons why they were rejected in greater detail.

Request for Comment

As part of its environmental analysis of the proposed action, URS Corporation is requesting comments from local, state and federal agencies that have an interest or duty to consult on this environmental assessment.

We appreciate your assistance and we look forward to receiving your comments.


WISE COUNTY, TEXAS
Alvord
Chico
Chico Stone Quarry
Decatur
Bridgeport
Runaway Bay
Fairview
Boyd
Aurora
Rhome
Newark
CHICAGO ROCK ISLAND
Creek
Rail Easement
Proposed Alignment
Gas/Oil Pipelines
Power Lines
Quarry Boundary
0.25 0 0.25 0.5 Miles
Alamo North
Proposed Rail Alignment
Sources: USGS 7.5' Chico Quadrangle, 1978;
Pape-Dawson Engineering, 2000

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
WinSystems Center Building
711 Stadium Drive, Suite 252
Arlington, Texas 76011

2-12-01-I-450

April 13, 2001

Ms. Jaya Zyman-Ponebshek
URS Corporation
8501 North Mopac Boulevard
Austin, Texas 78759

Dear Ms. Zyman-Ponebshek:

This responds to your April 3, 2001, letter requesting comments on Alamo North Texas Railroad Corporation's proposed new railroad line project in Wise County, Texas. The proposed project includes the construction of approximately 2 miles of new common carrier rail line from the Union Pacific Railroad to a stone quarry near Chico, Texas.

The endangered black-capped vireo (*Vireo atricapillus*) is a habitat specialist, nesting in mid-successional brushy areas (i.e., before the area develops into a mature woodland) where the dominant woody species are oaks, sumacs, persimmon, and other broad-leaved shrubs. Juniper may be common in vireo habitat, but juniper prominence is not essential or even preferred by the birds. Typical nesting habitat is composed of a shrub layer extending from the ground to about six feet covering about 35-55% of the total area, combined with a tree layer that may reach to 30 feet or more. Open, sometimes grassy spaces separate clumps of trees and shrubs. The vireo depends on broad-leaved shrubs and trees, especially oaks, which provide insects on which it feeds.

In north-central Texas black-capped vireo habitat is associated with rocky limestone outcrops and escarpment areas. Common woody vegetation found in vireo habitat include: oaks, mountain laurel, sumacs, redbud, persimmon, and junipers. The species composition appears to be less important than the presence of adequate broad-leaved shrubs interspersed with open grassy areas, foliage to ground level, and an irregular canopy height.

Suitable black-capped vireo habitat may occur within the proposed project area. Harassment of breeding birds could occur should they be present near the railroad line route during construction activities. This potential for harassment could be avoided by scheduling construction activities outside of the vireo nesting and breeding season, which generally runs from March through August. However, if construction is to occur between March and August, we recommend that action areas be checked for the presence of suitable vireo habitat.

If suitable habitat is discovered, please contact this office to discuss the need to conduct presence/absence surveys. If no suitable habitat is discovered, no further contact with this office would be necessary.

Endangered whooping cranes (*Grus americana*) may be encountered in any county in north central Texas during migration. Autumn migration normally begins in mid-September, with most birds arriving on the wintering grounds at Aransas National Wildlife Refuge between late October and mid-November. Spring migration occurs during March and April. Whooping cranes prefer isolated areas away from human activity for feeding and roosting, with vegetated wetlands and wetlands adjacent to cropland being utilized along the migration route. Foods consumed usually include frogs, fish, plant tubers, crayfish, insects, and waste grains in harvested fields. Based on available information, the proposed project is not likely to adversely affect the whooping crane.

Thank you for the opportunity to comment on the proposed project. If you have any questions, please contact Jacob Lewis of my staff at (817) 277-1100.

Sincerely,

Carol S Hale

for Thomas J. Cloud, Jr.
Field Supervisor

Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

April 19, 2001

Ms. Jaya Zyman-Ponebshek
URS Corporation
P.O. Box 201088
Austin, Texas 78720-1088

RE: STB Finance Docket 34002 – Request for Comments/Consultation on Proposed New Railroad Line in Wise County, Texas

Dear Ms. Zyman-Ponebshek:

The Texas Department of Transportation (TxDOT) has reviewed the proposed action and alternatives for the above referenced project submitted to our office in a letter dated April 3, 2001. It appears that there are no crossings of state maintained roadways. In addition, TxDOT has no plans for a new facility within the areas designated. Therefore, at this time, TxDOT has no comments.

Sincerely,

Ken Bohuslav, P.E.
Deputy Division Director
Environmental Affairs Division

USDA United States Department of Agriculture

Natural Resources Conservation Service

101 South Main
Temple, Texas
76501-7602

April 18, 2001

Mr. Jaya Zyman-Ponebshek
Project Manager
URS Corporation
P. O. Box 201088
Austin, Texas 78720-1088

Dear Mr. Zyman-Ponebshek:

Thank you for your letter relative to the STB Finance Docket 34002 – Request for Comments/Consultation on the Proposed New Railroad Line in Wise County, Texas. We have no comments on the proposed actions. We also do not have permitting, easement, or approval authority for such activities.

Thank you for the opportunity to comment on this activity.

Sincerely,

For JOHN P. BURT
State Conservationist

DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF

May 1, 2001

Planning, Environmental, and Regulatory Division
Regulatory Branch

SUBJECT: Project Number 200100231, NEW RAILROAD LINE, WISE COUNTY

Mr Jaya Zyman-Ponebshek
URS Corporation
P.O. Box 201088
Austin, Texas 78720-1088

Dear Mr. Zyman-Ponebshek:

Thank you for your letter dated April 3, 2001. Your request has been assigned Project Number 200100231.

Mr. Stan Walker has been assigned as the regulatory project manager for your request and will be evaluating it as expeditiously as possible. However, because of our permit workload it will take a while for us to respond.

You may be contacted for additional information about your request. For your information, we are enclosing guidance on submittals and mitigation that may help you prepare future requests or supplement your current request.

If you have any questions about the evaluation of your request, please contact Mr. Stan Walker at the address above or telephone (817)978-3551 and refer to your assigned project number. Please note that it is unlawful to start work without a Department of the Army permit if one is required.

Wayne A. Lea
Chief, Regulatory Branch

Enclosures

US Army Corps
of Engineers
Fort Worth District

Recommendations for Department of the Army Permit Submittals

April 6, 1998

The following recommendations from the U.S. Army Corps of Engineers (USACE), Fort Worth District, specify information that should be submitted with project proposals for review of permitting requirements under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899:

1. A vicinity map (e.g., county map, USGS quad sheet, etc.) showing the location of the project, including any borrow or disposal site(s) or other outlying features.

2. A delineation and description of wetlands and other waters of the United States in the area that would be affected by the proposed work. Delineations of wetlands must be conducted using the "Corps of Engineers Wetland Delineation Manual", USACE Waterways Experiment Station Wetlands Research Program Technical Report Y-87-1, dated January 1987. The on-line edition of the manual is available on the Internet at http://www.wes.army.mil/el/wetlands/wlpubs.html.

3. The purpose of, and need for, the project.

4. Plan, profile, and cross-section views of all work, both permanent and temporary, in or adjacent to waters of the United States, including wetlands. (If a standard individual permit is required, drawings on 8 ½ by 11 inch sheets must be provided.)

5. The type, source, and volume of material proposed to be discharged into and/or excavated from waters of the United States. In cases where the activity may result in a permanent change to pre-construction contours or drainage patterns, provide the reasons why the changes are necessary and a description of the anticipated outcome of the changes.

6. The width and depth of the water body and the waterward distance of any structures from the existing shoreline if located on a navigable water or a USACE lake project.

7. A description of the project's likely temporary and permanent impact on the aquatic environment.

8. A description of actions in project design to avoid and minimize adverse impacts to the aquatic environment and to compensate for unavoidable adverse impacts to the aquatic environment.

9. The project schedule.

10. A statement disclosing whether or not any species listed as threatened or endangered under the Endangered Species Act might be affected by, or found in the vicinity of, the proposed project. Direct coordination with the U.S. Fish and Wildlife Service concerning the potential impact of the entire project on threatened and endangered species is strongly encouraged.

11. Any other relevant information, including available information on cultural resources and hydrology.

US Army Corps
of Engineers
Fort Worth District

Mitigation and the Section 404 Regulatory Program

March 6, 1998

Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (USACE) regulates the discharge of dredged and fill material into waters of the United States, including wetlands. Thus, Department of the Army authorization is normally required for discharges associated with such ground disturbing activities as filling, grading, excavation, and mechanized land clearing when they occur in waters of the United States. When the USACE reviews a project that would require Department of the Army authorization, the evaluation process typically includes a determination of whether the applicant has taken sufficient measures to mitigate the project's likely adverse impacts to the aquatic ecosystem. Mitigation is a three-step sequential process, with the steps employed in the following order:

Avoid: Take all appropriate and practicable measures to avoid those adverse impacts to the aquatic ecosystem that are not absolutely necessary.

Minimize: Take all appropriate and practicable measures to minimize those adverse impacts to the aquatic ecosystem that cannot reasonably be avoided.

Compensate: Implement appropriate and practicable measures to compensate for adverse project impacts to the aquatic ecosystem that cannot reasonably be avoided or minimized. Known as compensatory mitigation.

While this sequential mitigation process is normally applied only during the individual permit process, most nationwide and regional general permits do require that discharges of dredged and fill material into waters of the United States be avoided and minimized to the maximum extent practicable, unless the District Engineer approves a compensation plan that is more beneficial to the environment than minimization or avoidance measures undertaken at the project site. The District Engineer will normally require, on a case-by-case basis, all practicable and appropriate compensation as a condition of Department of the Army authorization.

The purpose of compensatory mitigation is to replace those aquatic ecosystem functions that would be lost or impaired because of an authorized activity. The amount and type of compensatory mitigation required for a particular activity should be commensurate with the nature and extent of the activity's adverse impact on aquatic functions and be practicable in terms of cost, existing technology, and logistics, in light of the overall project purpose. Aquatic functions, which are most simply defined as "the things that aquatic systems do," include sediment trapping and nutrient removal; flood storage and conveyance; erosion control; providing habitat for fish and wildlife, including endangered species; groundwater recharge; water supply; production of food, fiber, and timber; and recreation. The number and extent of these and other aquatic functions vary widely among the myriad aquatic sites found across the Fort Worth District.

Compensatory mitigation may include the restoration, enhancement, creation, or, in exceptional cases, preservation of wetlands and other aquatic resources. **Restoration** is the re-establishment of functions and characteristics that have either ceased to exist or exist in a substantially degraded state; **enhancement** includes activities conducted on, or adjacent to, existing wetlands and other aquatic resources that are intended to enhance one or more aquatic functions such as conversion to a less destructive land use or

improvement of the existing plant community; **creation** is the establishment of a wetland or other aquatic resource where one did not formerly exist; and **preservation** is the protection of existing ecologically important wetlands and other aquatic resources in perpetuity by implementing certain legal and physical mechanisms. Preservation is normally appropriate only in exceptional cases, such as when a high-value aquatic resource would be lost to lawful activities were it not protected by preservation. Restoration and enhancement are preferred to creation because they are normally less expensive, more successful, and less likely to adversely affect existing upland and open water habitats. A compensatory mitigation project that involves ground disturbing activities in waters of the United States may itself require Department of the Army authorization.

It is important to remember that the goal is to replace the affected aquatic functions to the extent that they would be lost or impaired by the proposed activity, that is, compensation should generally be "in-kind." Compensation should be provided as close to the site of the adverse impacts as practicable to minimize losses to the local aquatic system. However, off-site compensation may be more appropriate when the compensation cannot reasonably be conducted at the impact site or would be more beneficial to the aquatic ecosystem if conducted at another location. In some cases, it may be acceptable to provide partial compensation at multiple locations. For example, it may be necessary to compensate for flood storage impacts on site while compensating for wildlife habitat impacts at another location.

Two general approaches to implementing compensatory mitigation are project-specific and third-party compensation projects. A project-specific compensation project is conducted to compensate for the adverse impacts of a single activity requiring Department of the Army authorization. A project-specific compensation project is typically designed and implemented by the permittee in conjunction with the authorized activity and is often located on-site or near the authorized activity. The permittee is also responsible for monitoring and assuring the success of the mitigation project.

The third-party approach consolidates compensation for multiple projects requiring Department of the Army authorization into one or more off-site mitigation projects. This approach is distinguished from project-specific compensation in that a third party typically accepts the responsibility of designing, implementing, and assuring the success of compensatory mitigation for the permittee. This approach involves such activities as mitigation banking, combined or joint mitigation projects, and in-lieu fee and fee-based trusts. A brief description of each follows:

Mitigation banking: Mitigation systems that provide consolidated off-site compensation for numerous authorized activities in advance of adverse project impacts. A mitigation bank is developed and operated under the terms of a mitigation banking instrument among the bank owner, the USACE, and other natural resource agencies. In most cases, Department of the Army authorization is also required to develop the bank. For further information on mitigation banking, refer to "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks," published in the Federal Register on November 28, 1995 (Vol. 60, No. 228, pp. 58605-58614).

Combined or joint-project mitigation: Mitigation systems that simultaneously provide compensatory mitigation for more than one permitted project that adversely impact the aquatic ecosystem. Unlike a mitigation bank, a joint project typically does not provide compensation in advance of project impacts. Each use of a joint mitigation project typically requires USACE approval.

In-lieu fee and fee-based mitigation: Mitigation systems that provide a Department of the Army permittee an opportunity to pay a fee in lieu of conducting project-specific compensation activities. Fees are used to fund projects designed to restore, enhance, create, or, in some cases, preserve aquatic ecosystem functions. These projects should reflect both the nature and extent of aquatic functions adversely affected by permitted activities. Typically, in-lieu systems pertain to unspecified future mitigation projects, while fee-based systems involve specific, identified mitigation projects, that are either complete or under development as fees are collected.

Department of the Army permittees are responsible for developing a mitigation plan and submitting it to the USACE. An appropriate real estate arrangement, such as a deed restriction, will normally be required to achieve long-term success of a mitigation plan or to provide sufficient compensation for adverse project impacts. A mitigation plan should generally include at a minimum:

1. A complete description of efforts made to avoid and minimize adverse project impacts to the aquatic ecosystem. Include impacts to local hydrology, upstream and downstream aquatic resources, and wildlife habitat.

2. A thorough description of the proposed compensatory mitigation area, including a vicinity map, site map, aerial and on-site photographs (if available), land use history, soils, local hydrology, and dominant vegetation.

3. A jurisdictional determination, including a wetland delineation (if appropriate) conducted in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual. The jurisdictional determination report should include a site description, field data sheets, summary of findings, and a detailed map of the site indicating the location and extent of all waters of the United States, including wetlands.

4. A detailed description of the nature and location of all proposed ground disturbing activities and structures associated with the compensatory mitigation project. Include information about grading, filling, planting, land clearing, road construction, size and spacing of culverts and bridges, fences, buildings, utility lines, intake and outfall structures, and disposal and borrow area locations. Provide plan and cross-section drawings of all pertinent work and structures and the volume and type of material to be discharged. Include both temporary and permanent activities and structures.

5. For work that would create new aquatic resources or modify existing aquatic resources, provide as appropriate:

   a. A description of the proposed hydrology showing that it is adequate for the site, sufficient suitable quality water will be available during appropriate seasons, and the site would be correctly graded to provide appropriate hydrology and not cause adverse impacts to the site such as erosion of streams and channels;

   b. A soil description, including the source and type of substrate to be used, demonstrating it is able to support the proposed plantings and hydrology;

   c. A planting plan that includes a list of native locally adapted species to be used, density of planting, planting method, planting schedule, and planting survival success criteria.

6. A description of how the mitigation would appropriately compensate for adverse project impacts to aquatic ecosystem functions.

7. A statement disclosing whether any species listed as threatened or endangered under the Endangered Species Act might be affected by, or found in the vicinity of, the proposed mitigation project.

8. Any other relevant information such as information on cultural resources, the proximity of the project to ecologically sensitive areas, and project impacts on the local/regional hydrology.

9. A proposal for monitoring the success of the proposed mitigation plan, including the name and telephone number of the responsible party, success criteria, and a compliance reporting program. Generally, monitoring should continue at least two years after all mitigation project activities have been completed and planting survival requirements have been achieved. Include all appropriate contingency plans and address provisions for long-term operations and maintenance.

Mitigation proposals are evaluated by Fort Worth District Regulatory Program staff in consultation with other natural resources agencies including the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Texas Natural Resource Conservation Commission, Texas Parks and Wildlife Department, and Railroad Commission of Texas.

For further information about compensatory mitigation or our regulatory program, contact the Regulatory Branch at: U.S. Army Corps of Engineers; Regulatory Branch, CESWF-EV-R; P.O. Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to (817) 978-2681.

URS

September 18, 2001

Mr. Stan Walker
Department of the Army
Fort Worth District
Corps of Engineers
P.O. Box 17300
Fort Worth, Texas 76102-0300

Re: Project reference No. 200100231, Alamo North Texas Railroad Company Proposed Rail Line Construction in Chico, Wise County, Texas - STB Finance Docket 34002

Dear Mr. Walker:

In response to your Fax dated September 12, 2001 I am enclosing additional information on Alamo North Texas Railroad Corporation's proposed project. The information includes a statement of the purpose and need of the project a description of wetlands (or lack there of) and other waters of the United States affected by the proposed action, a vicinity map, a USGS map, aerial photographs, photo log, FEMA map, cross section views, description of alternatives considered, an assessment of the adverse and beneficial effects of the project, and a discussion of impacts to endangered species and cultural resources.

As stated in the attached information, the proposed rail line will cross only one stream (Village Creek). Based on all information available to date, this is the only portion of the alignment that is within the 100-yr flood plain. Alamo North will make every effort to restore the natural contours at the Village Creek crossing and will not place any above-ground fill within the 100-year flood plain. In addition, the area around the creek will be re-seeded with natural vegetation as soon as practicable, to allow for permanent stabilization.

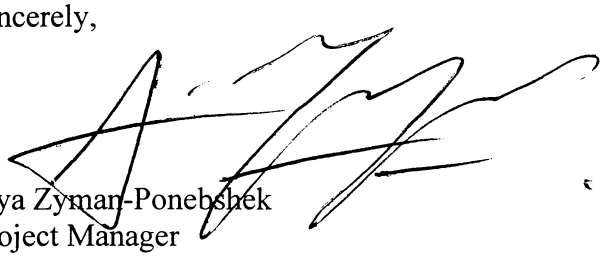
On June 7, 2001, a biologist from URS Corporation (URS), the independent third-party contractor approved by the Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) to assist in the preparation of the environmental assessment for the proposed project, conducted a field reconnaissance of the area and concluded that there are no wetlands in the project area. The biologist observed that there was an absence of hydrophilic plants that would indicate at least some water retention during wet periods of the year. In addition, a review of the National Wetlands Inventory Maps showed no wetlands in the project area. Furthermore, URS has been in consultation with the U.S Fish and Wildlife Service to determine possible impacts of the proposed project on rare, threatened or endangered species.

URS Corporation
P.O. Box 201088
Austin, TX 78720-1088
9400 Amberglen Boulevard
Austin, TX 78729
Tel: 512.454.4797

The cultural resource survey conducted on June 7, 2001 found no sites on or eligible for listing in the National Register of Historic Places (NRHP). The subject property is an old homestead with several barns, a house and two oil wells present. The house is outside of the project area, is in very poor condition and appears to have been built in the 1930's. The proposed action will not disturb any standing structure nor was any archeological site found along the impacted area. URS is also in consultation with the Texas Historical Commission.

I look forward to receiving additional environmental information from your agency on the proposed project. If you need additional information, please do not hesitate to call me at (512) 419-5316 or Rini Ghosh, the SEA contact at the Board, at (202) 565-1539.

Sincerely,



Jaya Zyman-Ponebshek
Project Manager

cc: Rini Ghosh, SEA

Martin Marietta Materials

Southwest Division
San Antonio District
17910 IH-10 West
San Antonio, Texas 78257
Telephone (210) 208-4400
Watts (800) 856-1771

October 23, 2001

Jaya Zyman-Ponebshek
Senior Biochemical/Environmental Engineer
URS Corporation
9400 Amberglen Blvd.
Austin, TX 78729

Dear Jaya:

In reference to your request regarding technical data for traversing the Village Creek crossing, the logical alternatives are to construct a railroad tressle or culverts. Although the final design has yet to be determined, and upon consultation with our engineering group, a preliminary evaluation of the creek appears to lend itself to the use of culverts.

The stream's high water mark dimensions varies in width from approximately 10 to 25 feet, with the depth ranging between 3 and 8 feet. Additionally, since the deeper and wider areas are located near the proposed rail easement area, we anticipate simply setting the culverts in place accompanied with a very minimal amount of fill. Consequently, there doesn't appear to be any requirement or need to disturb the contours along the creek area.

As a result of the favorable dimensions and topographical configuration, the selected option will nonetheless, satisfy all terms and conditions prescribed in the Nationwide Permit 14, titled *Linear Transportation Crossings*.

We greatly appreciate your effort to expedite this process.

Please do not hesitate to contact me at 210.208.4290 should you have any further questions.

Sincerely,

Ray Tucker
General Manager
Short Line Operations

DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

November 5, 2001

REPLY TO
ATTENTION OF:
Planning, Environmental, and Regulatory Division

Jaya Zyman-Ponebshek
URS Corporation
P.O. Box 201088
Austin, Texas 78720-1088

Dear Ms. Zyman-Ponebshek:

Thank you for your letter of April 3, 2001 concerning a proposal by Alamo North Texas Railroad Corporation to construct the proposed rail line, including the discharge of fill material into waters of the United States associated with installation of a culvert crossing of Village Creek in Chico, Wise County, Texas. This project has been assigned Project Number 200100231. Please include this number in all future correspondence concerning this project.

Having reviewed the site information taken from the summary description furnished by the URS Corporation, the proposed route of the new single track rail line of the Union Pacific Railroad to the Chico stone quarry near Chico, Texas, crosses the designated 100-year flood plain of the Village Creek as shown on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) for Wise County, Texas and Incorporated Areas, Community Panel Number 481051 0095C dated March 19, 1990. This map is available upon request.

The proposed construction of this common carrier rail line should have minimal effect upon the flood plain of Village Creek as long as the existing ground elevations are not disturbed and the flow path is not altered. New bridge construction should be designed so that the flood plain boundary and flow path of Village Creek are not affected after the completion of the project. Any new changes along this proposed route, which encroaches into the 100-year flood plain should comply with FEMA regulations and coordinated with the local flood plain administer. For questions concerning these requirements contact FEMA, Region VI, Denton, Texas at (940) 898-5136.

In addition to FEMA regulations, Executive Order 11988 directs Federal agencies not to conduct activities, which would encourage development within the flood plain. If there is Federal funding of the project, the proposed must comply with this executive order.

We have reviewed this project in accordance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Under Section 404, the U.S. Army Corps of Engineers regulates the discharge of dredged and fill material into waters of the United States, including wetlands. Our responsibility under Section 10 is to regulate any work in, or affecting, navigable waters of the United States. Based on your description of the proposed work, and other information available to us, we have determined that this project will not involve activities subject to the requirements of Section 10. However, this project will involve activities subject to the requirements of Section 404. Therefore, it will require Department of the Army authorization.

It appears that this project is authorized by nationwide permit 14 for Linear Transportation Crossings. To use this permit, the person responsible for this project must ensure that the work is in compliance with the specifications and conditions listed on the enclosures. Also, if the work occurs on Indian Country/Indian Tribal lands, the person responsible for the project must obtain an individual water quality certification or waiver from the U.S. Environmental Protection Agency, Attention Marine and Wetlands Section (6WQ-EM), 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 665-6680. Failure to comply with these specifications and conditions invalidates the authorization and may result in a violation of the Clean Water Act.

Our verification for the construction of an activity under this nationwide permit is valid for two years from the date of this letter, unless prior to that date the nationwide permit is suspended or revoked, or modified such that the activity would no longer comply with the terms and conditions of the nationwide permit on a regional or national basis. It is the responsibility of the permittee to ensure continued confirmation of an activity, complying with the specifications and conditions, and any changes to the nationwide permit.

Our review of this project also addresses its effects on endangered species. Based on the information provided, we have determined that this project will not affect any species listed as threatened or endangered by the U.S. Fish and Wildlife Service within our permit area. However, please note that you are responsible for meeting the requirements of general condition 11 on endangered species.

The permittee must sign and submit to us the enclosed certification that the work, including any required mitigation, was completed in compliance with the nationwide permit. You should submit your certification within 30 days of the completion of work.

This permit should not be considered as an approval of the design features of any activity authorized or an implication that such construction is considered adequate for the purpose intended. It does not authorize any damage to private property, invasion of private rights, or any infringement of federal, state, or local laws or regulations.

Thank you for your interest in our nation's water resources. If you have any additional questions regarding these evaluations, please contact Ms. Angie Stapp at (817) 978-0225.

Sincerely,

Paul M. Hathorn

Paul M. Hathorn
Chief, Environmental Resources Branch

Copy Furnished:

Mr. Rollin MacRae
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78444

NATIONWIDE PERMIT 14
Linear Transportation Crossings
Effective Date: June 7, 2000

Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, and airport runways and taxiways) in waters of the United States, including wetlands, provided the activity meets the following criteria:

a. This NWP is subject to the following acreage and linear limits:

(1) For public linear transportation projects in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than ½ acre of waters of the United States;

(2) For public linear transportation projects in tidal waters or non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than _ acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet, or;

(3) For private linear transportation projects in all waters of the United States, provided the discharge does not cause the loss of greater than _ acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet;

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than $^{1}/_{10}$ acre of waters of the United States; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the United States to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing a water of the United States. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an individual permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

NATIONWIDE PERMIT GENERAL CONDITIONS

The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

4. Aquatic Life Movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 water quality certification and Coastal Zone Management Act consistency determination.

7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a ``study river'' for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Water Quality. (a) In certain States and tribal lands an individual 401 water quality certification must be obtained or waived (See 33 CFR 330.4(c)).

(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the State or tribal 401 certification (either generically or individually) does not require or approve a water quality management plan, the permittee must include design criteria and techniques that will ensure that the authorized work does not result in more than minimal degradation of water quality. An important component of a water quality management plan includesstormwater management that minimizes degradation of the downstream aquatic system, including water quality. Refer to General Condition 21 for stormwater management requirements. Another important component of a water quality management plan is the establishment and maintenance of vegetated buffers next to open waters, including streams. Refer to General Condition 19 for vegetated buffer requirements for the NWPs.

10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a nationwide permit does not authorize the ``take'' of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with ``incidental take'' provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal ``takes'' of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at http://www.fws.gov/r9endspp/endspp.html and http://www.nfms.gov/prot__res/esahome.html, respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification. (a) Timing: Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the PCN is complete within 30 days of the date of receipt and can request the additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity: (1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or (2) If notified in writing by the District or Division Engineer that an individual permit is required; or (3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, thepermittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Notification: The notification must be in writing and include the following information:

(1) Name, address, and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity; and

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7, Outfall Structures and Maintenance, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 14, Linear Transportation Crossings, the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the United States and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable.

(7) For NWP 21, Surface Coal Mining Activities, the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan.

(8) For NWP 27, Stream and Wetland Restoration, the PCN must include documentation of the prior condition of the site that will be reverted by the permittee.

(9) For NWP 29, Single-Family Housing, the PCN must also include:

(i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;
(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring ¼ acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than ¼ acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31, Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(11) For NWP 33, Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(12) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site.

(13) For NWP 39, Residential, Commercial, and Institutional Developments, and NWP 42, Recreational Facilities, the PCN must include a compensatory mitigation proposal that offsets unavoidable losses of waters of the United States or justification explaining why compensatory mitigation should not be required.

(14) For NWP 40, Agricultural Activities, the PCN must include a compensatory mitigation proposal to offset losses of waters of the United States.

(15) For NWP 43, Stormwater Management Facilities, the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with State and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the United States.

(16) For NWP 44, Mining Activities, the PCN must include a description of all waters of the United States adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the United States, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities).

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(19) For NWPs 12, 14, 29, 39, 40, 42, 43, and 44, where the proposed work involves discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified on FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps), the notification must include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved local floodplain construction requirements.

(c) Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(19) of General Condition 13. A letter containing the requisite information may also be used.

(d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the PCN to expedite the process and the District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.

Any compensatory mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or

specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required in order to ensure no more than minimal adverse effects on the aquatic environment, the activity will be authorized within the 45-day PCN period, including the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the United States will occur until the District Engineer has approved a specific mitigation plan.

(e) Agency Coordination: The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse effects on the aquatic environment to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than ½ acre of waters of the United States, the District Engineer will, upon receipt of a notification, provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the DistrictEngineer will provide a response to National Marine Fisheries Service within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetlands Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(9)(iii) for parcels less than ¼ acre in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. Compliance Certification. Every permittee who has received aNationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. Thecertification will be forwarded by the Corps with the authorization letter. The certification will include: (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; (b) A statement that any required mitigation was completed in accordance with the permit conditions; and (c) The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the

acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed _ acre.

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. Mitigation. The project must be designed and constructed to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable at the project site (i.e., on site). Mitigation will be required when necessary to ensure that the adverse effects to the aquatic environment are minimal. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) Compensatory mitigation at a minimum 1:1 ratio will be required for all wetland impacts requiring a PCN. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands to meet the minimum compensatory mitigation ratio, with preservation used only in exceptional circumstances.

(b) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed;

(c) The District Engineer will require restoration, creation, enhancement, or preservation of other aquatic resources in order to offset the authorized impacts to the extent necessary to ensure that the adverse effects on the aquatic environment are minimal. An important element of any compensatory mitigation plan for projects in or near streams or other open waters is the establishment and maintenance, to the maximum extent practicable, of vegetated buffers next to open waters on the project site. The vegetated buffer should consist of native species. The District Engineer will determine the appropriate width of the vegetated buffer and in which cases it will be required. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require wider vegetated buffers to address documented water quality concerns. If there are open waters on the project site and the District Engineer requires compensatory mitigation for wetland impacts to ensure that the net adverse effects on the aquatic environment are minimal, any vegetated buffer will comprise no more than _ of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced on a one-to-one acreage basis. In addition, compensatory mitigation must address adverse effects on wetland functions and values and cannot be used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (e.g., for NWP 39, ¼ acre of wetlands cannot be created to change a ½ acre loss of wetlands to a ¼ acre loss; however, ½ acre of created wetlands can be used to reduce the impacts of a _ acre loss of wetlands). If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed.

(d) To the extent appropriate, permittees should consider mitigation banking and other appropriate forms of compensatory mitigation. If the District Engineer determines that compensatory mitigation is necessary to offset losses of waters of the United States and ensure that the net adverse effects of the authorized work on the aquatic environment are minimal, consolidated mitigation approaches, such as mitigation banks, will be the preferred method of providing compensatory mitigation, unless the District Engineer determines that activity-specific compensatory mitigation is more appropriate, based on which is best for the aquatic environment. These types of mitigation are preferred because they involve larger blocks of protected aquatic environment, are more likely to meet the mitigation goals, and are more easily checked for compliance. If a mitigation bank or other consolidated mitigation approach is not available in the watershed, the District Engineer will consider other appropriate forms of compensatory mitigation to offset the losses of waters of the United States to ensure that the net adverse effects of the authorized work on the aquatic environment are minimal.

20. Spawning Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar topreconstruction conditions, and must not increase water flows from the project site, relocate water, or redirect water flow beyondpreconstruction conditions. In addition, the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows.

22. Adverse Effects From Impoundments. If the activity, including structures and work in navigable waters of the United States or discharge of dredged or fill material, creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the United States may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish

and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after he determines that the impacts to the critical resource waters will be no more than minimal.

26. Fills Within 100-Year Floodplains. For purposes of this general condition, 100-year floodplains will be identified through the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA- approved local floodplain maps.

(a) Discharges Below Headwaters. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the 100-year floodplain at or below the point on a stream where the average annual flow is five cubic feet per second (i.e., below headwaters) are not authorized by NWPs 29, 39, 40, 42, 43, and 44. For NWPs 12 and 14, the prospective permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above-grade fills in waters of the United States within the 100-year floodplain below headwaters comply with FEMA or FEMA-approved local floodplain construction requirements.

(b) Discharges in Headwaters (i.e., above the point on a stream where the average annual flow is five cubic feet per second).

(1) Flood Fringe. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the flood fringe of the 100-year floodplain of headwaters are not authorized by NWPs 12, 14, 29, 39, 40, 42, 43, and 44, unless the prospective permittee notifies the District Engineer in accordance with General Condition 13. The notification must include documentation that such discharges comply with FEMA or FEMA-approved local floodplain construction requirements.

(2) Floodway. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the floodway of the 100-year floodplain of headwaters are not authorized by NWPs 29, 39, 40, 42, 43, and 44. For NWPs 12 and 14, the permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above grade fills proposed in the floodway comply with FEMA or FEMA- approved local floodplain construction requirements.

NATIONWIDE PERMITS

The following is a list of the nationwide permits that are effective as of June 7, 2000:

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Maintenance
8. Oil and Gas Structures
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Crossings
15. U.S. Coast Guard Approved Bridges
16. Return Water from Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. State Administered Section 404 Programs
25. Structural Discharges
27. Stream and Wetland Restoration Activities
28. Modifications of Existing Marinas
29. Single-Family Housing
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Projects
32. Completed Enforcement Actions
33. Temporary Construction, Access and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Residential, Commercial, and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities

401 Water Quality Certification Conditions for Nationwide Permits

Below are the 401 water quality certification conditions the Texas Natural Resource Conservation Commission (TNRCC) added to the March 9, 2000 issuance and modification of Nationwide Permits (NWP), as described in Part III of the Federal Register (65 FR No. 47, pp. 12818-12899). These conditions were included as part of TNRCC's certification issued on June 7, 2000.

Additional information regarding these conditions, including descriptions of the best management practices, can be obtained from the TNRCC by contacting the 401 Coordinator, MC-150, P. O. Box 13087, Austin, Texas 78711-3087 or from the appropriate U.S. Army Corps of Engineers district office.

The applicant must use at least one best management practice (BMP) from each of the following three categories of on-site water quality management.

I. Erosion Control

Disturbed areas must be stabilized to prevent the introduction of sediment to adjacent wetlands or water bodies during wet weather conditions (erosion). *At least one* of the following BMPs must be maintained and remain in place until the area has been stabilized.

- o Temporary Vegetation
- o Blankets/Matting
- o Mulch
- o Sod

II. Post-Construction TSS Control

After construction has been completed and the site is stabilized, total suspended solids (TSS) loadings shall be controlled by *at least one* of the following BMPs.

- o Retention/Irrigation
- o Constructed Wetlands
- o Extended Detention Basin
- o Wet Basins
- o Vegetative Filter Strips

III. Sedimentation Control

Prior to project initiation, the project area must be isolated from adjacent wetlands and water bodies by the use of BMPs to confine sediment. *At least one* of the following BMPs must be maintained and remain in place until project completion.

- o Sand Bag Berm
- o Rock Berm
- o Silt Fence
- o Hay Bale Dike
- o Triangular Filter Dike

Dredged material shall be placed in such a manner that prevents sediment runoff into water in the state, including wetlands. Water bodies can be isolated by the use of one or more of the required BMPs identified for sedimentation control. These BMP's must be maintained and remain in place until the dredged material is stabilized.

US Army Corps
of Engineers
Fort Worth District

General Recommendations for Department of the Army Permit Submittals

June 11, 2001

The following recommendations from the U.S. Army Corps of Engineers (USACE), Fort Worth District, specify information that should be submitted with project proposals for review of permitting requirements under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899:

1. The purpose of, and need for, the project.

2. A delineation and description of wetlands and other waters of the United States in the area that would be affected by the proposed work, and a description of the project's likely impact on the aquatic environment. Delineations of wetlands must be conducted using the "Corps of Engineers Wetland Delineation Manual", USACE Waterways Experiment Station Wetlands Research Program Technical Report Y-87-1, dated January 1987 (on-line edition available at http://www.wes.army.mil/el/wetlands/wlpubs.html), including all supplemental guidance (currently includes guidance dated October 7, 1991, and March 6, 1992). The supplemental guidance is included in the on-line version and may also be obtained from your USACE district office. In addition, include the width and depth of the water body and the waterward distance of any structures from the existing shoreline.

3. A vicinity map (e.g., county map, USGS topographic map, etc.) showing the location of all temporary and permanent elements of the project, including the route of the entire highway or road, borrow pit(s), disposal site(s), staging area(s), etc. This map, or an additional map, should show the project area in relation to nearby highways and other roads, and other pertinent features. A ground survey is not required to obtain this information. (All maps and drawings must be submitted on 8½ by 11 inch sheets.)

4. Plan, profile, and cross-section views of all work (fills, excavations, structures, etc.), both permanent and temporary, in, or adjacent to, waters of the United States, including wetlands, and a description of the proposed activities and structures, such as the dimensions and/or locations of highways and roads (both temporary and permanent), coffer dams, equipment ramps, borrow pits, disposal areas, staging areas, haul roads, and other project related areas within the USACE permit area(s). The permit area(s) includes all waters of the United States affected by activities associated with the project, as well as any additional area of non-waters of the United States in the immediate vicinity of, directly associated with, and/or affected by, activities in waters of the United States. The USACE permit area(s) includes borrow pits, disposal areas, staging areas, etc. in many cases. A description of the proposed work should include such information as the height, width, and length of structures and fills, widths of cleared rights-of-way, location of all affected areas of waters of the United States, and the size and spacing of culverts, bridges and other crossings of waters of the United States. (All maps and drawings must be submitted on 8½ by 11 inch sheets.)

5. The volume of material proposed to be discharged into and/or excavated from waters of the United States and the proposed type and source of the material.

6. A written discussion of the alternatives considered and the rationale for selecting the proposed alternative as the least environmentally damaging practicable alternative. Practicable alternatives that do not involve a discharge into a special aquatic site, such as wetlands, are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise. The package should also include documentation that the amount of area impacted is the minimum necessary to accomplish the project.

7. An assessment of the adverse and beneficial effects, both permanent and temporary, of the proposed work and documentation that the work would result in no more than a minimal adverse impact on the aquatic environment.

8. A compensatory mitigation plan for unavoidable adverse impacts to the aquatic environment. This plan should include a description of proposed appropriate and practicable actions that would restore, enhance, protect, and/or replace the functions and values of the aquatic ecosystem unavoidably lost in the project area because of the proposed work.

9. A discussion documenting whether any species listed as endangered or threatened under the Endangered Species Act might be affected by, or found in the vicinity of, the USACE permit area for the proposed project. Direct coordination with the FWS concerning the potential impact of the entire project on endangered and threatened species is strongly encouraged.

10. A discussion documenting whether any cultural resources, particularly those historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP), would be affected by, or are in the vicinity of, the USACE permit area for the proposed project.

11. Documentation that any permanent above-grade fills in waters of the United States within the 100-year floodplain comply with FEMA, or FEMA-approved local, floodplain development requirements.

12. The applicant should include any other relevant information, including information on hydrology and hydraulics.

June 6, 2001

Jaya Zyman-Ponebshek
URS Corporation
P.O. Box 201088
Austin, TX 78720-1088

RE: Proposed Alamo North Chico Quarry Railroad Line, Wise County

Dear Jaya:

Thank you for coordinating with this agency in your planning activities regarding the proposed construction of a railroad line between the existing Union Pacific (UP) Railroad line and a stone quarry in Chico. Texas Parks and Wildlife Department (TPWD) staff have reviewed the project and offer the following comments.

The project entails the construction of a two-mile, single-track railroad line between the existing UP line and the quarry. The proposed route traverses existing woods and pasturelands and would cross an intermittent creek

The Department recommends minimizing clearing of riparian vegetation as much as possible and using enhanced erosion control measures to reduce the potential of sedimentation into the water bodies associated with the culverts. Potential for loss of riparian habitat exists at waterbody crossings and riparian corridors have become increasingly valuable to many wildlife species as other habitat is lost. This is particularly evident in rural and agricultural areas where land is tilled to the edge of most waterways and the riparian corridor may be the only wildlife habitat left. Revegetation plans for the disturbed areas should include the use of site-specific native plant species that have high erosion control as well as high value for wildlife. Replacement of lost vegetation along the waterbodies, especially tree and brush species, should occur at a 2:1 ratio. Attached are the ***Texas Parks and Wildlife Guidelines for Construction and Clearing within Riparian Areas*** which should assist you in your planning process and reduce the likelihood your project will impact fish, wildlife, and plant resources.

For your information, I have attached lists of Endangered and Threatened species that may occur in Wise County. Although the list should prove useful as background material, it is not intended as a substitute for comprehensive on-site evaluations by competent biologists. Determination of the actual presence of a species in a given area depends on a number of variables such as daily and seasonal activity cycles, environmental activity cues, preferred habitat, transiency, and population density (both wildlife and human). Absence of a species can be

4200 SMITH SCHOOL ROAD
AUSTIN, TEXAS 78744-3291
512-389-4800
www.tpwd.state.tx.us

demonstrated only with great difficulty and then only with repeated negative observations, taking into account all of the variable factors contributing to the lack of observability. Information regarding known locations and potential adverse impacts to sensitive species and natural communities near the proposed project area can be obtained by contacting Celeste Brancel-Brown at the letterhead address or at (512) 912-7021.

Construction of the proposed railroad line should be performed to minimize disturbance to existing vegetation. In particular, the line should be routed to avoid any standing mature trees or brush in the area. Revegetation efforts to any staging areas and other disturbed areas not directly associated with the actual railroad operations should emphasize establishment of native trees, grasses, and leguminous forbs. Enhancement of existing native grasses or prairie remnants can be assisted by the reseeding of exposed areas with a mixture of native grasses and limited mowing practices. Mowing only essential use areas will allow native grasses to prosper, generally without additional irrigation.

I appreciate the opportunity to review and comment on this project. I apologize for the lateness of our reply.

Sincerely,

Danny Allen
Wildlife Habitat Assessment Program
Wildlife Division

Attachment

DLA:pmo.8515

23. CONSTRUCTION WITHIN RIPARIAN AREAS

Texas Parks & Wildlife Department Guidelines for Construction and Clearing Within Riparian Areas

A. Summary of Impacts Anticipated With Clearing of Rights-of-Way and Construction Within Riparian Habitats

The following discussion lists a portion of the adverse impacts often incurred to natural resources with clearing of vegetation along streams and rivers as a result of construction disturbance and right-of-way (ROW) preparation.

(1) Direct Vegetation Loss

Removal of vegetation along stream systems is usually very damaging to fish and wildlife habitat and to natural processes associated with these systems. Vegetation associated with forested stream systems usually reflects highest value wildlife habitats. The degree of adverse impact to habitat resulting from this vegetation loss relates directly to the quantity of the vegetation loss and quality of the vegetation assemblage in fulfilling life requisites of those organisms using it.

(2) Disruption of Habitat Continuity

Habitat fragmentation is a serious threat to biological diversity. Because of the high use of riparian systems in general by wildlife, TPWD recommends that forest systems associated with floodplains be managed so as to avoid habitat fragmentation. Wildlife use river corridors to travel across the landscape and to move between food, cover, and breeding locations. Fish use habitat features within stream systems where appropriate physical parameters of light, temperature and water quality exist. As human development activity continues to compete for the natural resources existing within these riverine systems, remaining forested floodplains become increasingly valuable and scarce. Clearing for construction and utility ROW's, widening of utility ROW's, realignment of roadways crossing riverine systems, and abandonment of roads which cross these systems contribute significantly to increasing fragmentation of high value riparian habitats.

(3) Impacts to Protected and Rare Species and Natural Resources

Riverine systems are more prone to function as protected species habitat than upland areas because they tend to be less disturbed and represent higher value systems. Consequently, endangered species and natural plant community investigations should always be conducted when disturbance of these systems is projected or planned.

(4) Impacts to Natural Functions Associated with Forested Stream Systems

Riparian area management, which was once considered to be essentially a fish and wildlife concern, is a broader issue that cuts across various agency functions, including not only fish and wildlife but also range management, watershed management, and soil management. Streamside forests are complex ecosystems vital to the protection of our streams and rivers. Functions served by these forested riparian systems include:

- Streamside forests improve the quality of water resources by removing or ameliorating the effects of pollutants in runoff...
- Streamside forests increase biological diversity and productivity of stream communities by improving habitat and adding organic matter to the food base...
- The streamside forest removes sediment and sediment-attached phosphorus by filtration...
- The streamside forest transforms nitrate to nitrogen gas (nutrient cycling in biological cycles)...
- The streamside forest acts as a sink by storing nutrients for extended periods of time...
- The streamside forest controls habitat damaging sediments and provides organic energy to downstream reaches...

B. Recommendations Concerning Construction in Riparian Areas

Construction and clearing of vegetation for development can drastically affect natural resources and natural processes associated with stream systems. These resources and processes are fundamental to the development of habitat for fish and wildlife. The following general recommendations concerning disturbances within riparian systems should be followed to minimize adverse impacts to fish, wildlife, and plant resources.

(1) Channel Modification (channelization, realignment, relocation, modification, "improvement")

Channel modification projects serve to destroy natural aquatic and riparian habitats through direct removal of woody vegetation along streamsides and

alteration of the physical attributes affecting the stream's configuration and flow characteristics. Therefore, TPWD supports channel modification projects only if vegetation impacts are avoided or mitigated and the reconstructed channel provides for a stream floodplain, natural stream meandering, pools and riffles, streamside vegetation, overhead canopy vegetation and appropriate width/depth/velocity characteristics.

Clearances may not be given when:

- moderate to high quality fish or wildlife habitat or any endangered species habitat exists;
- project benefits are considered minimal in comparison to environmental costs; alternatives to stream modification are not evaluated.

(2) *Stream Crossing Structures (culverts, bridges, transmission lines, pipelines, utility rights-of-way)*

- cross at right angles to the stream;
- locate crossings where the channel is straight and exhibits unobstructed flows;
- avoid crossing at bends;
- structure design (span) must ensure that the natural stream-bed and bank remains intact;
- during construction, work from only one bank;
- vegetation and overstory canopy should be preserved (i.e. preserve the streamside vegetation corridor), especially the more southerly or westerly banks to maximize shading;
- construction of conduit for fluids or transmission lines across waterways should be installed by boring under streams versus trenching through the stream substrate;
- accommodate low-flow fish passage; and,
- Avoid vegetation buffer areas adjacent to wetlands and riparian corridors by a minimum of 100'.

(3) *Stream Maintenance (stream cleaning and desnagging)*

- Rocks and boulders are usually part of the natural stream-bed and should not be removed unless they cause significant ponding, sediment deposition, or accumulation problems with logs, small debris, or garbage.

- Trees should not be removed from stream banks unless they: are dying, dead, or have damaged root systems; are leaning over the channel at an angle greater than 30 degrees off vertical; have root systems undercut to the degree that they rely on adjacent vegetation for support (if so, leave the root system for stabilization).

- Logs should not be removed from streams if they: are isolated or single logs that are embedded, jammed, rooted, or water logged in the channel or floodplain; are not subject to displacement by the current; are not blocking flows; are embedded logs parallel to the channel or stabilizing a shoreline.

(4) General Mitigation Measures

- Restore, replant, or revegetate with native vegetation (85% survivability required) all areas incurring minor or temporary disturbance.

- If soil replacement is required, the replacement soils should be native to the area (similar physical and chemical characteristics) and non-toxic.

- If wetland disturbance is involved, in-kind, in-basin replacement is recommended. Wetland creation should not destroy good to excellent quality upland habitat.

(5) General Stream Conservation Criteria

- Construction and development activities should occur in such a manner to prevent or minimize damage to any stream, river or lake from pollution by debris, sediment, foreign material or from the manipulation of equipment and/or materials in or near such waterways.

- Water used for wash purposes or any other operation which might cause the water to become polluted with sand, silt, cement, oil or other impurities should not be returned directly to a stream, river or lake or to a ditch immediately flowing into a stream, river or lake. Such waters should be detained and treated prior to release to the natural ecosystem.
- Any water used from a stream, river or lake should be taken in such a manner that maintains water rights and sustains fish life downstream or around a stream, river or lake's perimeter.

- If the proposed development indicates substantial disturbance or removal of the State-owned streambed material, a permit from TPWD under Chapter 86, Parks & Wildlife Code may be required. Application forms and instructions are available by contacting the Resource Protection Division at (512) 389-4902.

Notes for County Lists of Texas' Special Species

The Texas Parks and Wildlife (TPWD) county lists **include**:

Vertebrates, Invertebrates, and Vascular Plants on the special species lists of the Texas Biological and Conservation Data System. These special species lists are comprised of all species, subspecies, and varieties that are federally listed; proposed to be federally listed; have federal candidate status; are state listed; or carry a global conservation status indicating a species is imperiled, very rare, or vulnerable to extirpation.

Colonial Waterbird Nesting Areas and Migratory Songbird Fallout Areas are contained on the county lists for coastal counties only.

The TPWD county lists **exclude**:

Natural Plant Communities such as Little Bluestem-Indiangrass Series (native prairie remnant), Water Oak-Willow Oak Series (bottomland hardwood community), Saltgrass-Cordgrass Series (salt or brackish marsh), Sphagnum-Beakrush Series (seepage bog).

Other Significant Features such as non-coastal bird rookeries, migratory bird information, bat roosts, bat caves, invertebrate caves, and prairie dog towns.

The **revised date** on each county list reflects the last date any changes or revisions were made for that county and reflects current listing statuses and taxonomy.

Species that appear on county lists do not all share the same probability of occurrence within a county. Some species are migrants or wintering residents only. Additionally, a few species may be historic or considered extirpated within a county. Species considered extirpated within the state are so flagged on each list.

Revised: 01-03-15

The Texas Biological and Conservation Data System

The Texas Biological and Conservation Data System (TXBCD), established in 1983, is the state's most comprehensive source of information on rare, threatened, and endangered plants and animals, exemplary natural communities, and other significant features. The TXBCD is constantly updated, providing current information on statewide status and locations of these unique elements of natural diversity.

The TXBCD gathers biological information from museum and herbarium collection records, publications, experts in the scientific community, organizations, individuals, and on-site field surveys conducted by TPWD staff on public lands or private lands with written permission. TPWD staff botanists, zoologists, and ecologists perform field surveys to locate and verify specific occurrences of high-priority biological elements and collect accurate information on their condition, quality, and management needs.

The TXBCD can be used to help evaluate the environmental impact of routing and siting options for development projects. It also assists in impact assessment, environmental review, and permit review.

Given the small proportion of public versus private land in Texas, the TXBCD includes less than a representative inventory of rare resources in the state. Although it is based on the best data available to TPWD regarding rare species, these data cannot provide a definitive statement as to the presence, absence, or condition of special species, natural communities, or other significant features in any area. Nor can these data substitute for on-site evaluation by qualified biologists. The TXBCD information is intended to assist the user in avoiding harm to species that may occur.

Please use the following citation to credit the TXBCD as the source for this county level information:

> Texas Biological and Conservation Data System. Texas Parks and Wildlife, Wildlife Diversity Branch. County Lists of Texas' Special Species. [county name(s) and revised date(s)].

For information on obtaining a project review form or a site-specific review of a project area for rare species, please call (512) 912-7011.

Revised: 01-03-15

TEXAS PARKS AND WILDLIFE DEPARTMENT
ENDANGERED RESOURCES BRANCH
SPECIAL SPECIES LIST
WISE COUNTY

Revised:
98-03-31

Scientific Name	Common Name	Federal Status	State Status
*** BIRDS			
FALCO PEREGRINUS	PEREGRINE FALCON	E/SA	
FALCO PEREGRINUS ANATUM	AMERICAN PEREGRINE FALCON	~~LE~~	~~E~~
FALCO PEREGRINUS TUNDRIUS	ARCTIC PEREGRINE FALCON	E/SA	T
GRUS AMERICANA	WHOOPING CRANE	LE	E
NUMENIUS BOREALIS	ESKIMO CURLEW	LE	E
STERNA ANTILLARUM ATHALASSOS	INTERIOR LEAST TERN	LE	E
*** REPTILES			
CROTALUS HORRIDUS	TIMBER/CANEBRAKE RATTLESNAKE		T
PHRYNOSOMA CORNUTUM	TEXAS HORNED LIZARD		T
THAMNOPHIS SIRTALIS ANNECTENS	TEXAS GARTER SNAKE		
*** VASCULAR PLANTS			
DALEA REVERCHONII	COMANCHE PEAK PRAIRIE-CLOVER		

Codes:
- LE,LT - Federally Listed Endangered/Threatened
- PE,PT - Federally Proposed Endangered/Threatened
- E/SA,T/SA - Federally Endangered/Threatened by Similarity of Appearance
- C1 - Federal Candidate, Category 1; information supports proposing to list as endangered/threatened
- DL,PDL - Federally Delisted/Proposed Delisted
- E,T - State Endangered/Threatened

Species appearing on these lists do not all share the same probability of occurrence within a county. Some species are migrants or wintering residents only. Additionally, a few species may be historic or considered extirpated within a county. Species considered extirpated within the state are so flagged on each list. Each county's revised date reflects the last date any changes or revisions were made for that county, to reflect current listing statuses and taxonomy.

OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

Monday, June 04, 2001

Jaya Zyman-Ponebshek
URS Corporation
P. O. Box 201088
Austin, TX 78720-1088

RE: TX-R-20010411-0002-50

EA STB Finance Docket 34002-Proposed New Railroad Line in Wise County, Texas

Dear Ms. Zyman-Ponebshek:

Your application for assistance referenced above has been reviewed. No substantive comments were received.

We appreciate the opportunity afforded to review your proposal. Please let me know if we can be of further assistance.

Sincerely,

Denise S. Francis/MHR

Denise S. Francis, State Single Point of Contact
DSF/mhr

cc: Surface Transportation Board

Texas Review and Comment System

Review Notification

Applicant/Origination Agency: URS Corporation
Contact Name: Jaya Zyman-Ponebshek
Contact Phone: 512/419-5316
Email:

Project Name: EA STB Finance Docket 34002-Proposed New Railroad Line in Wise County, Texas

Funding Agency: STB
SAI/EIS#: TX-R-20010411-0002-50
Date Received: 4/6/2001
Date Comments Due BPO: 4/27/2001

Review Participants

Agencies

Texas Historical Commission
Dr. James Bruseth
Director, Department of Antiquities Protection
1511 Colorado Street
Austin, Texas

Railroad Commission of Texas
Mr. Gene Acuna
Director of Public Information/TRACS Contact
1701 North Congress
Austin, Texas

Texas Parks & Wildlife Department
Mr. Robert W. Spain
Chief, Habitat Assessment Branch
4200 Smith School Road
Austin, Texas

Texas Natural Resource Conservation Commission
Mr. Dan Burke
Office of Policy & Regulatory Dev. MC205
P. O. Box 13087
Austin, Texas

Cogs

North Central Texas Council of Governments
Ms. Lucille Johnson
TRACS Coordinator
P.O. Box 5888
Arlington, TX 76005-5888

Special Notes/Comments:

Summary of application provided by SPOC. Reviewers should contact applicant directly to receive a full copy for review.

☒ **No Comment**

Review Agency **Signature**

Return Comments to: Denise S. Francis /MHK

Denise S. Francis, State Single Point of Contact
Governor's Office of Budget & Planning
P.O. Box 12428
Austin, TX 78711
(512) 305-9415

TEXAS HISTORICAL COMMISSION

The State Agency for Historic Preservation

RICK PERRY, GOVERNOR

JOHN L. NAU, III, CHAIRMAN

F. LAWERENCE OAKS, EXECUTIVE DIRECTOR

May 8, 2001

Jaya Zyman-Ponebshek
URS Corporation
P.O. Box 201088
Austin, TX 78720

RE: Project review under Section 106 of the National Historic Preservation Act of 1966,
Proposed New Alamo North Texas Railway Railroad Line in Chico, Wise Co.

Dear Ms. Zyman-Ponebshek

Thank you for your April 3, 2001 correspondence and phone conversation (May 8) concerning the above referenced project. This letter serves as comment on the proposed undertaking from the State Historic Preservation Officer, the Executive Director of the Texas Historical Commission. The Section 106 review process (National Historic Preservation Act of 1966, 16 USC 470, as amended) requires all federal agencies and their designated representatives to take into account the effects of their undertakings on historic properties. Federal agencies, or their designated representatives, must request the comments of the Texas State Historic Preservation Officer (SHPO) if they are considering an action or if they are assisting, permitting, or licensing an action that will affect archaeological sites or properties (buildings, structures or sites) built in 1956 or prior.

In order to review your project under Section 106 of the National Historic Preservation Act, as amended, the Texas Historical Commission (THC) needs additional information to determine whether your proposed project will adversely affect historic properties. Please submit the following information:

- An accurate map of the project area, preferably a USGS topographic quad sheet, showing the project area and area of potential effect (APE)
- Addresses (or location description if no address is available) of any buildings, structures, or sites that are within the APE. Indicate the location of each building on the project map.
- Construction dates of any buildings/structures within the APE
- A brief history of the property and name of the architect/builder, if known
- Clear photographs (front and side elevations and streetscape) of each building, structure or site.

We look forward to further consultation with your office and hope to maintain a partnership that will foster effective historic preservation. Thank you for your cooperation in this federal review process, and for your efforts to preserve the irreplaceable heritage of Texas. **If you have any questions concerning our review or if we can be of further assistance, please contact Monica Penick at 512/463-5942.**

Sincerely,

Monica Penick, Historian
for F. Lawerence Oaks, SHPO

URS

Facsimile

Date: 9/27/01 Page 1 of: 5

To: Peter Ketter From: Jaya Zyman-Punebshet

Firm: Texas Historic Commission cc:

Facsimile: 475-3120 512.454.8807

Subject: Alamo North rail project – Wise County

Message:

Peter,

Find enclosed a copy of a portion of the lease agreement that describes the property in question. Also attached as exhibit "B" is the location of this house. Since the arial photo did n't clearly show the location of the house, I highlighted it with a white dot.

Let me know if you need additional information.

Thanks

Jaya

512-419-5316

URS Corporation
P.O. Box 201088
Austin, Texas 78720-1088
9400 Amberglen Blvd.
Austin, TX 78729
Tel: 512.454.4797

Martin Marietta Materials

Southwest Division
11467 Huebner, Suite 300
San Antonio, Texas 78230
Telephone (210) 696-8500
Watts (800) 683-2500

September 26, 2001

Jaya Zyman-Ponebshek
Senior Biochemical/Environmental Engineer
URS Corporation
9400 Amberglen Blvd.
Austin, TX 78729

Dear Jaya:

Per our telephone conversation on this date, I am enclosing the following pages of relative data concerning the Texas Historic Commission's concern over certain structures on the Dvorken property:

- Page 8 from the "Option and Rock Lease" between the owners of the Dvorken property and Martin Marietta Materials, signed by both parties on February 18, 2000, referencing the abandoned house and shed on the property
- Exhibit "B" attachment to "Option and Rock Lease" showing the location of the house and shed on the property.

It would appear from my understanding that these structures are the ones referred to by the Texas Historic Commission.

Please feel free to contact me if you need additional information.

Sincerely,

John R. Houston
Regional Vice President
Director of Rail Transportation

Enclosures

.ks

telephone lines, roads, ramps, railway spur lines or any other rail related equipment, stockpile areas, buildings and offices, and any other machinery or equipment on the Property, which, in the sole discretion of the Lessee are necessary or desirable for the processing, storing, distributing or selling of Leased Materials from the Property or other lands owned, leased or subleased by Lessee, (iii) use, at no cost, water in rivers, creeks, ponds, wells and other bodies of water located on or accessible to the Property, (iv) transport Leased Materials across the Property for processing at Lessee's plant on the Property, (v) transport materials mined and removed from other properties owned or leased by Lessee for processing at Lessee's plant on the Property and (vi) use the Property for any other lawful purpose ancillary hereto, including any related industry or activity which in Lessee's sole discretion would facilitate or increase the sale and/or marketability of Leased Materials, as provided, for example, in Article 2.3(c) and (d) below.

The abandoned house and shed located on the Property may be destroyed or dismantled by Lessee without liability to Lessor, at Lessee's sole cost and expense, in order to mine and remove the Leased Materials thereunder. The location of the abandoned house and shed on the Property is shown on Exhibit "B" attached hereto.

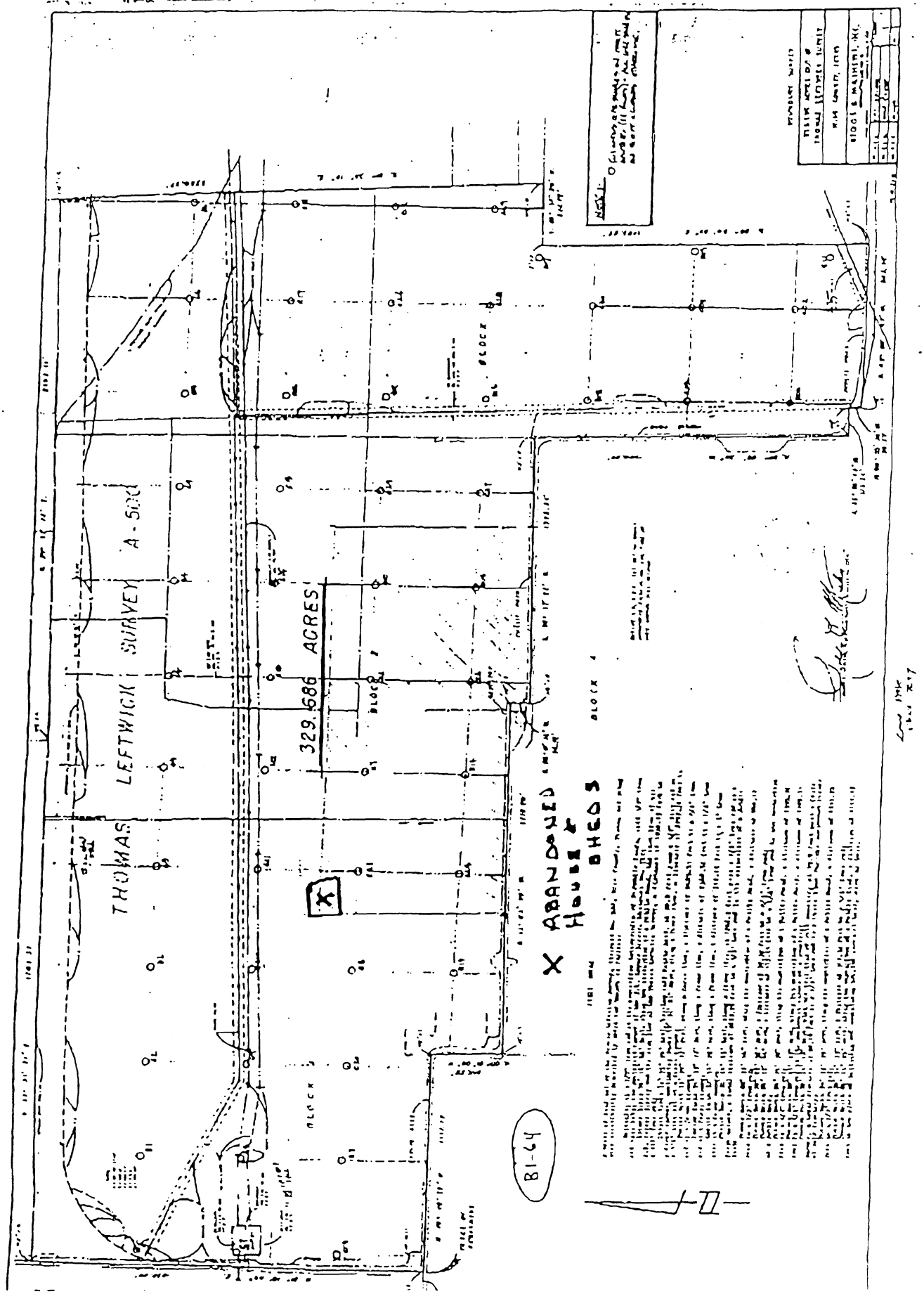
Immediately to the North of the abandoned house on the Property is an eighteen-wheel trailer owned by Lessor. Lessee, prior to commencing mining operations at this location, will give Lessor written notice of such impending mining operations in order to permit Lessor, at Lessor's expense, to remove the trailer from the Property. In the event that Lessor has failed to remove the trailer from the Property within thirty (30) days following the date of such written notice from Lessee to Lessor then Lessee may move or destroy the trailer without liability to Lessor.

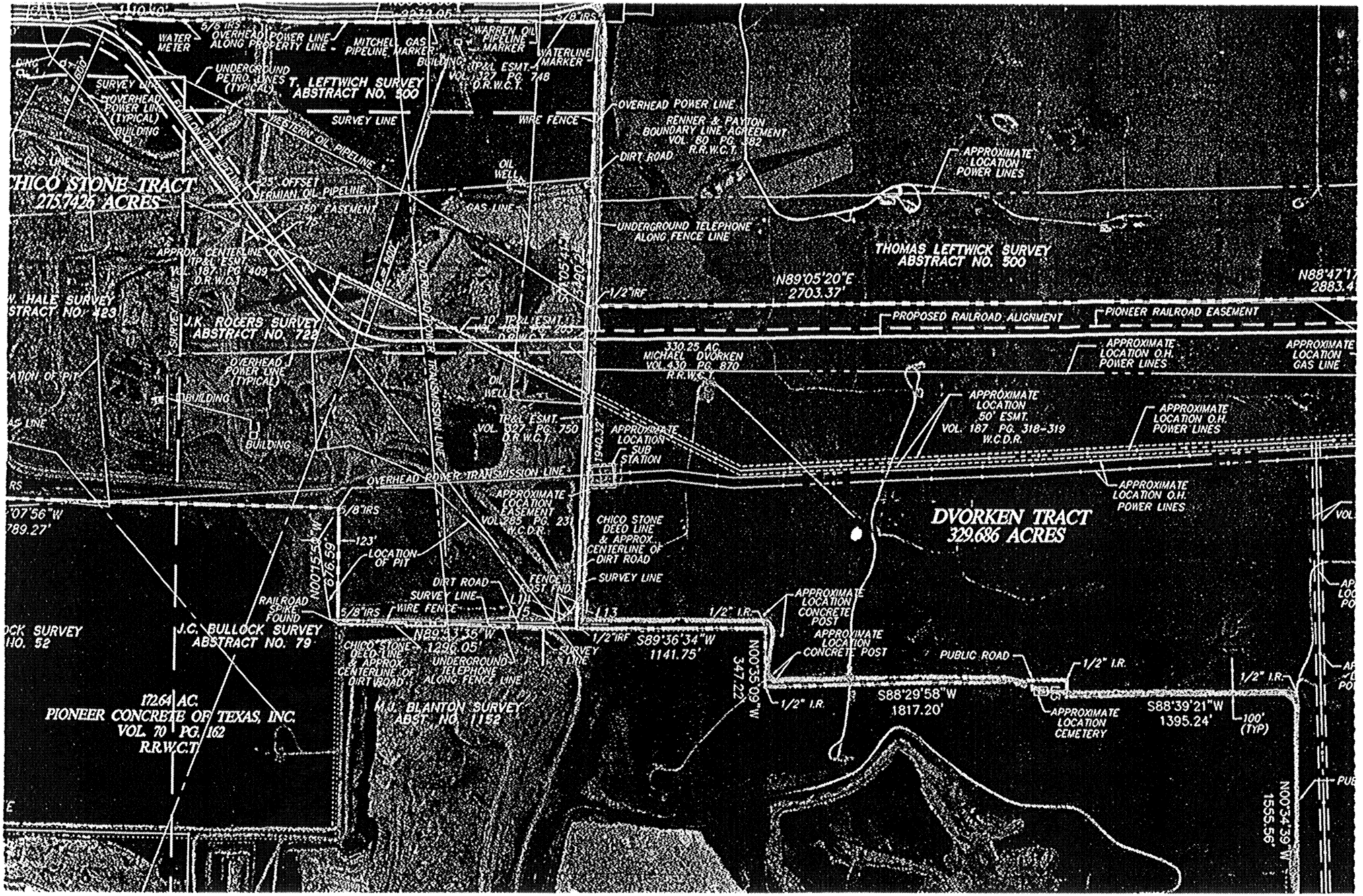
(b) From time to time during the term hereof, Lessee may desire to interrupt its processing of Leased Materials on the plant constructed by Lessee on the Property and use the plant on the Property for processing materials mined or removed from other properties owned or leased by Lessee in the vicinity of the Property. In such event, before processing such off-site materials, Lessee shall measure the inventories of Leased Materials on the Property, either by cross sectioning the inventory piles or by using another method acceptable in the aggregate industries, and inform Lessor of the tonnage of Leased Materials so stockpiled.

The materials brought onto the Property for processing shall be kept separate from inventories of the Leased Materials and Lessee will pay to Lessor an aggregate royalty amount on all off-site materials processed on the Property which is the greater of two

TOTAL P.01

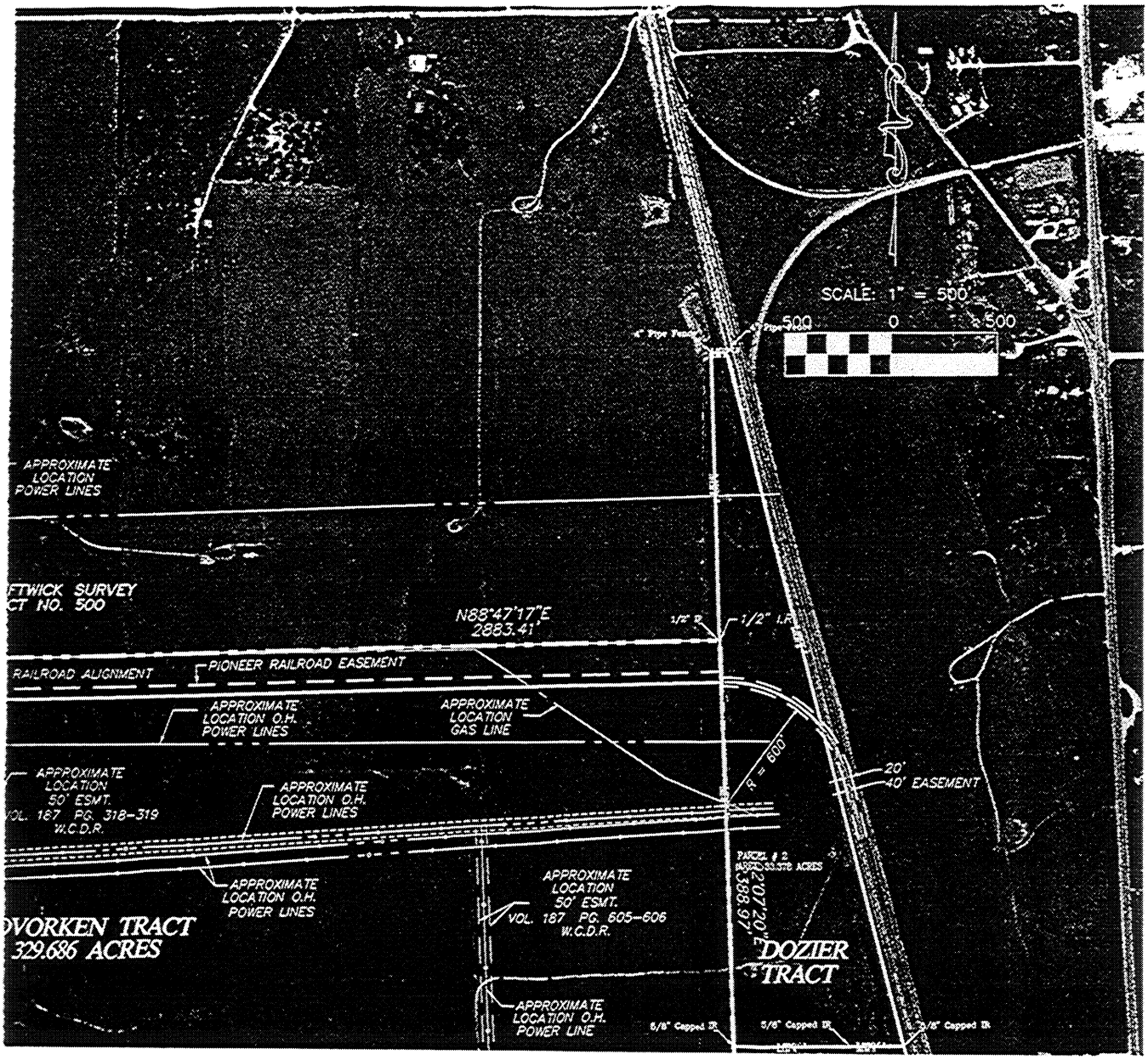
EXHIBIT "B"





House is where white spot is where two roads converge within the Dvorken tract below the power lines and more than 1000 ft south

Scale see next page.



REVISIONS:

PAPE-DAWSON ENGINEERS

This portion of the arial photo shows the scale.

URS

September 11, 2001

RECEIVED
SEP 14 2001
TEXAS HISTORICAL COMMISSION

F. Lawerence Oaks
State Historic Preservation Officer
The State of Texas
Texas Historic Commission
P.O. Box 12276
Austin, TX 78711-2276

Re: Project review under Section 106 of the National Historic Preservation Act of 1996, proposed New Alamo North Texas Railway Railroad Line in Chico, Wise County.

Dear Mr. Conway, MONICA

In response to your letter dated May 8, 2001 requesting additional information on Alamo North's proposed action, I am enclosing for your review a copy of the preliminary Draft Environmental Assessment that was prepared in July of this year. This report contains most of the information you requested in that letter, including project location, work description, the area of potential effects, site photographs, USGS maps and determination of effects. As stated in the attached report, the subject property is an old homestead with several barns, a house and two oil wells present. The house is out of the project area, is in poor condition and appears to have been built in the 1930's. An archeologist visited the site and the results of his visit are described in section 2.9 of this report.

According to the Surface Transportation Board's Rules governing this proposed project, Title 49 Section 1105.8, states that a historic report must be submitted by an applicant proposing an action that will result in the lease, transfer, or sale of a railroad line, sites or structures. However, Alamo North has no plans to dispose or alter railroad properties that are 50 years or older. Therefore, Alamo North is exempt from filing a historic report.

If you need additional information, please do not hesitate to call me at (512) 419-5316 or Rini Ghosh of the Surface Transportation Board's Section of Environmental Analysis at (202) 565-1539, the SEA contact at the Board.

Sincerely,

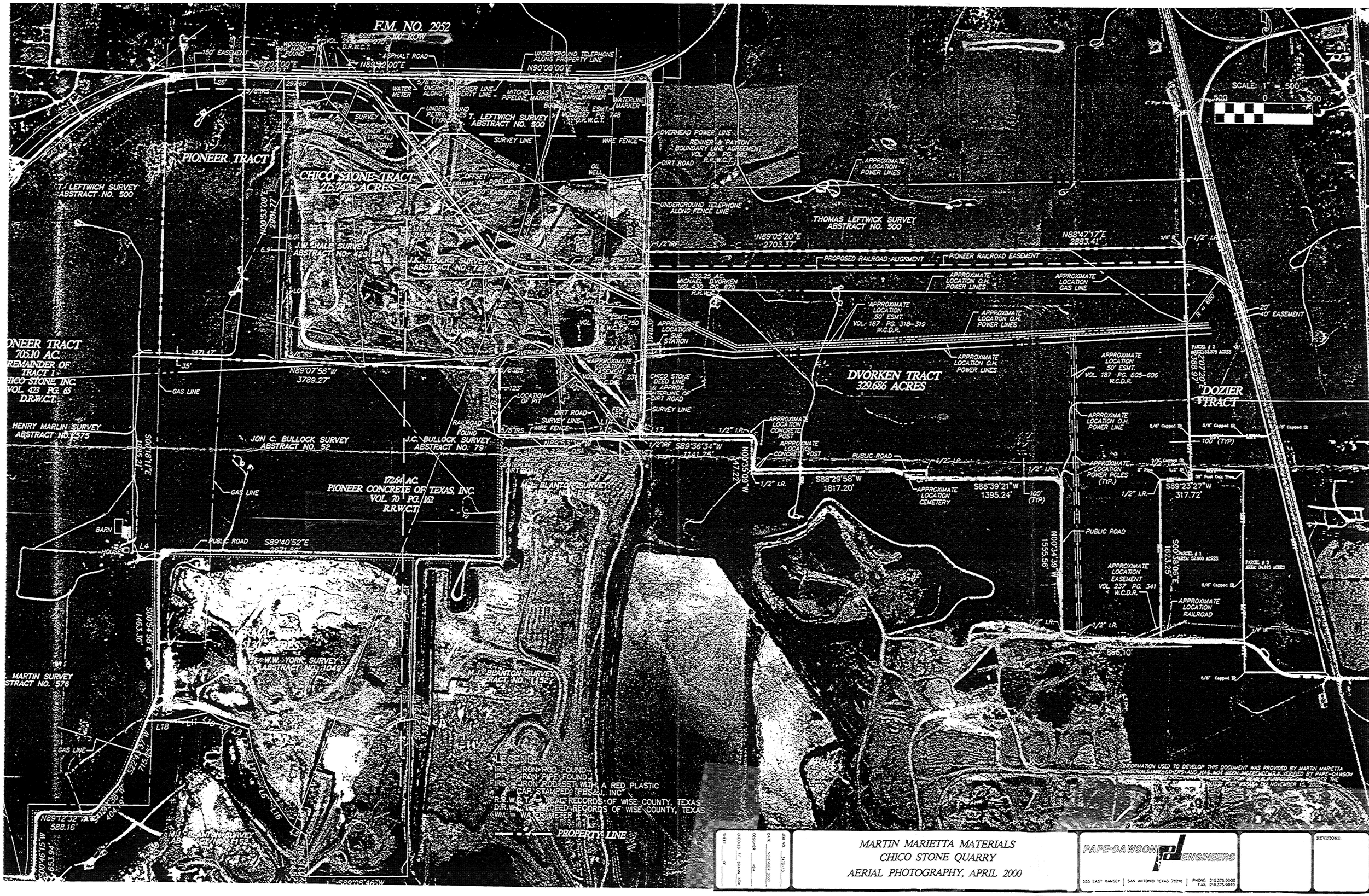
Jaya Zyman-Ponebshek
Project Manager

NO HISTORIC
PROPERTIES AFFECTED
PROJECT MAY PROCEED

By _____
for F. Lawerence Oaks
State Historic Preservation Officer
Date 10/3/01

URS Corporation
P.O. Box 201088
Austin, TX 78720-1088
9400 Amberglen Boulevard
Austin, TX 78729
Tel: 512.454.4797

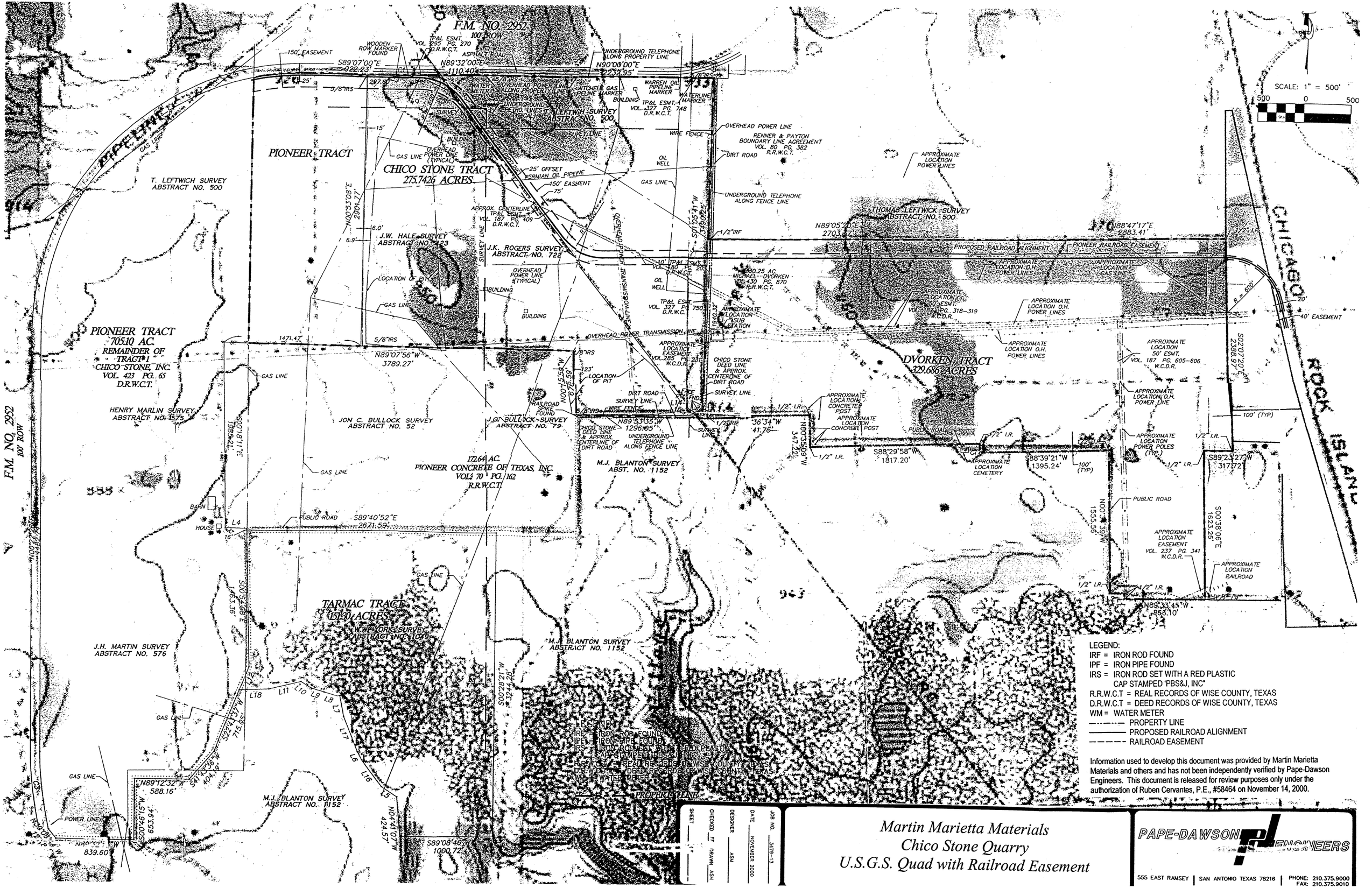
Appendix B
Aerial Photograph of Site/USGS



MARTIN MARIETTA MATERIALS
CHICO STONE QUARRY
AERIAL PHOTOGRAPHY, APRIL 2000

PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE 210.375.9000 FAX 210.375.9010

REVISIONS

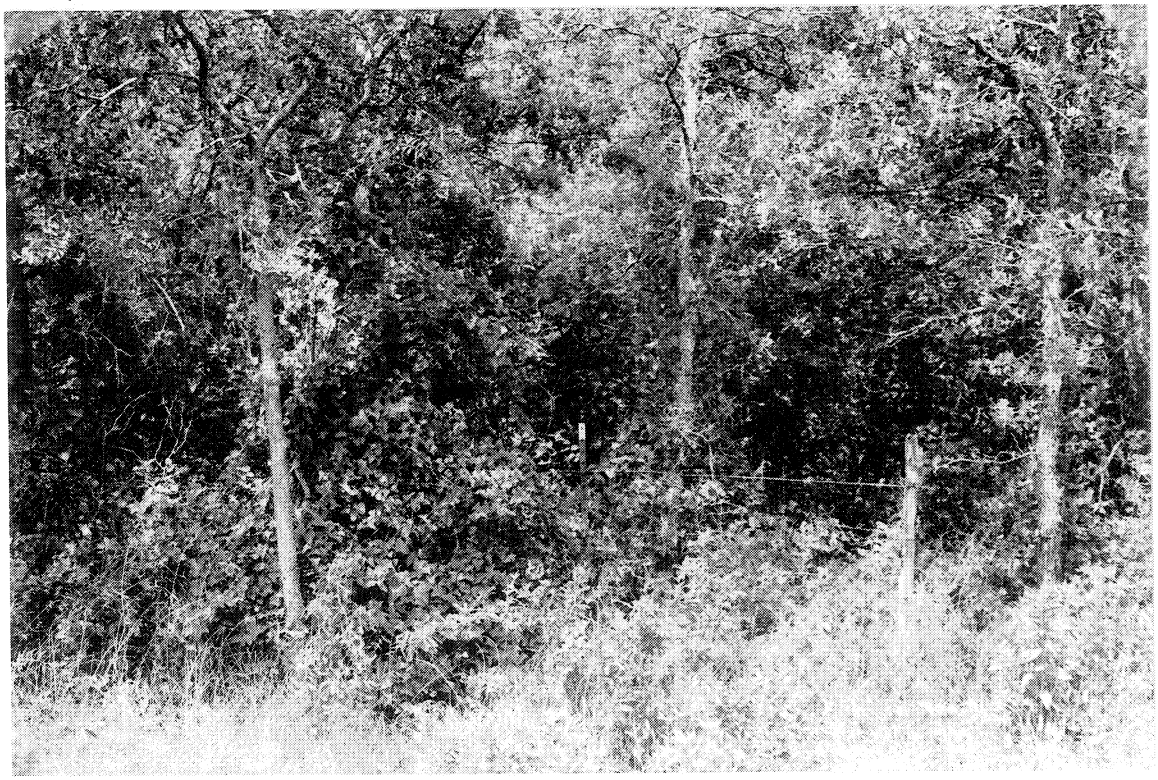

F.M. NO. 2952
100' ROW
PIONEER TRACT
CHICO STONE TRACT
275.7426 ACRES
T. LEFTWICH SURVEY
ABSTRACT NO. 500
PIONEER TRACT
705.10 AC.
REMAINDER OF TRACT
CHICO STONE, INC.
VOL. 423 PG. 65
D.R.W.C.T.
J.W. HALE SURVEY
ABSTRACT NO. 423
J.K. ROGERS SURVEY
ABSTRACT NO. 722
THOMAS LEFTWICH SURVEY
ABSTRACT NO. 500
DVORKEN TRACT
329.686 ACRES
HENRY MARLIN SURVEY
ABSTRACT NO. 575
JON C. BULLOCK SURVEY
ABSTRACT NO. 52
J.G. BULLOCK SURVEY
ABSTRACT NO. 79
172.64 AC.
PIONEER CONCRETE OF TEXAS, INC.
VOL. 70 PG. 162
R.R.W.C.T.
M.J. BLANTON SURVEY
ABST. NO. 1152
TARMAC TRACT
115.20 ACRES
W.W. YORK SURVEY
ABSTRACT NO. 1049
J.H. MARTIN SURVEY
ABSTRACT NO. 576
M.J. BLANTON SURVEY
ABSTRACT NO. 1152
CHICAGO, ROCK ISLAND
SCALE: 1" = 500'
500 0 500
LEGEND:
IRF = IRON ROD FOUND
IPF = IRON PIPE FOUND
IRS = IRON ROD SET WITH A RED PLASTIC CAP STAMPED "PBS&J, INC"
R.R.W.C.T = REAL RECORDS OF WISE COUNTY, TEXAS
D.R.W.C.T = DEED RECORDS OF WISE COUNTY, TEXAS
WM = WATER METER
PROPERTY LINE
PROPOSED RAILROAD ALIGNMENT
RAILROAD EASEMENT
Information used to develop this document was provided by Martin Marietta Materials and others and has not been independently verified by Pape-Dawson Engineers. This document is released for review purposes only under the authorization of Ruben Cervantes, P.E., #58464 on November 14, 2000.
Martin Marietta Materials
Chico Stone Quarry
U.S.G.S. Quad with Railroad Easement
SHEET
CHECKED FT
DRAWN ASM
DESIGNER ASM
DATE NOVEMBER 2000
JOB NO. 3472-13
PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE: 210.375.9000 FAX: 210.375.9010

Appendix C
Photo Log of Right-of-Way

One of two oil pumping wells located to the south of the ROW.

View of old homestead located to the south of the ROW.

View of old homestead located to the south of the ROW.



ROW of fence cross. Shows the vegetation along most of ROW.

ROW and vegetation along it.

ROW and vegetation along it.

View to the east from where the ROW leaves the leased property and crosses open field before connecting with the Main RR.

Creek (on map) where it crosses the dirt road on the south end of property.

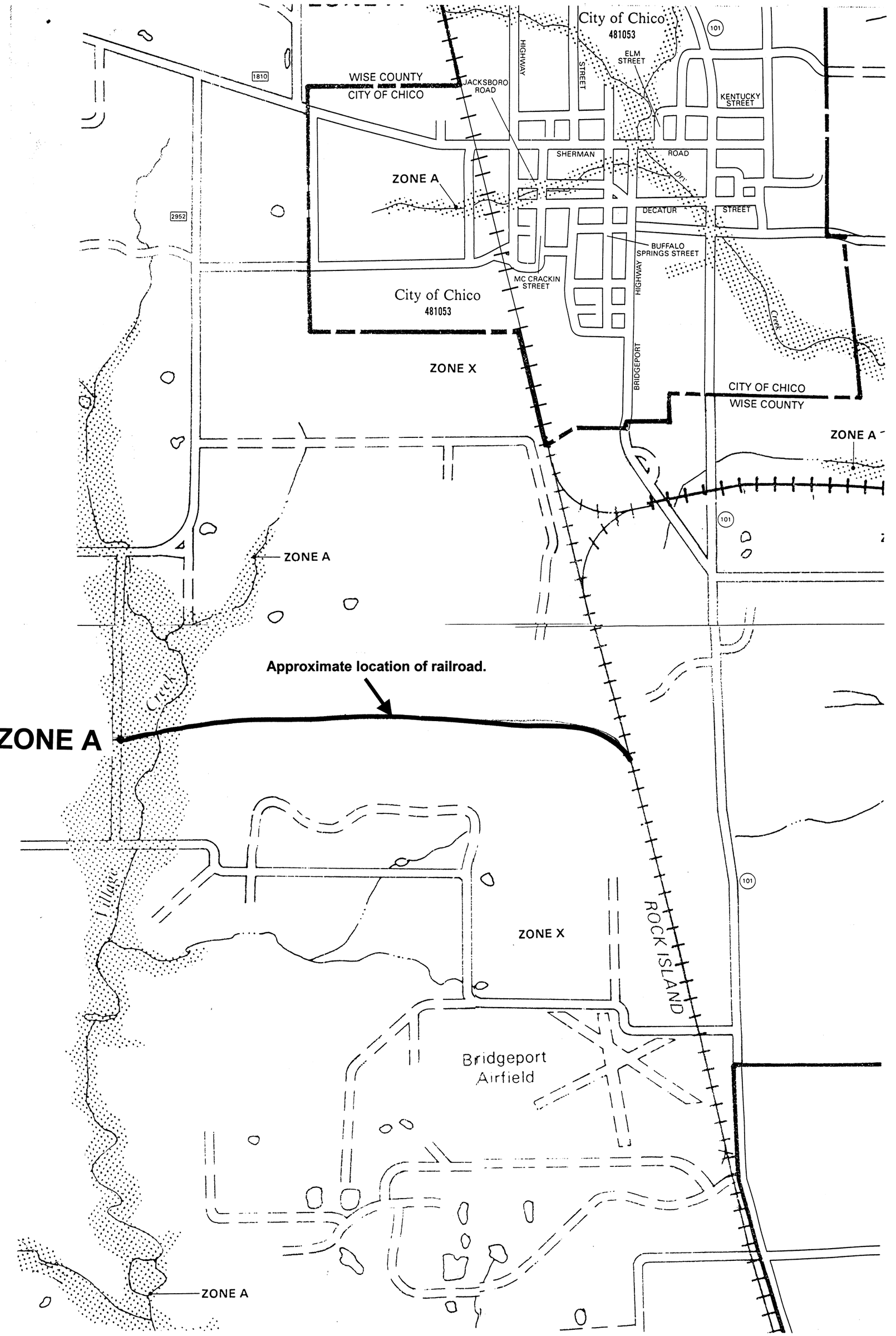
View of creek at the ROW looking south.

View of creek at the ROW looking north.

Western end of leased property. Taken from the road in front of the active quarry on ROW.

Appendix D

Federal Emergency Management Agency Map


City of Chico
481053
WISE COUNTY
CITY OF CHICO
JACKSBORO ROAD
HIGHWAY
STREET
ELM STREET
KENTUCKY STREET
SHERMAN
ROAD
Dr.
DECATUR
STREET
BUFFALO SPRINGS STREET
MC CRACKIN STREET
HIGHWAY
BRIDGEPORT
Creek
ZONE A
ZONE X
CITY OF CHICO
WISE COUNTY
1810
2952
101
Approximate location of railroad.
ZONE A
Creek
ZONE X
ROCK ISLAND
Bridgeport Airfield
ZONE A

Appendix E
References

References

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Appendix F

Alamo North Texas Railway Company's Petition for Exemption and Other Correspondence with the Surface Transportation Board

ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone (202) 298-8660 Fax (202) 342-0683
www.zsrlaw.com

RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902
raallen@zsrlaw.com

January 25, 2001

BY HAND

Elaine K. Kaiser
Chief, Section of Environmental Analysis
Surface Transportation Board
Room 504
1925 K Street, N.W.
Washington D.C. 20423

Re: Proposed Rail Line Construction in Wise County, Texas by Alamo North Texas Railroad -- Request for Approval of Third-Party Consultant -- Finance Docket No. 34002

Dear Ms. Kaiser:

I am writing to request your approval, in accordance with 49 C.F.R. § 1105.10(d), of a third-party consultant to prepare the environmental documentation associated with the proposed construction by Alamo North Texas Railroad Company ("ANTR") to construct a rail line approximately two miles in length in Wise County, Texas. The proposed line will be constructed between a limestone quarry operated by Martin Marietta Materials of Texas ("MMMT"), an affiliate of ANTR, and a connection with the Union Pacific Railroad Company ("UP") for the purpose of providing rail transportation to the quarry and other industries that may wish to use the line.

ANTR proposes to retain URS Corporation as the third-party consultant firm. URS Corporation is the successor to Radian International. We expect the work will be performed by a URS team headed by Mr. Robert Davis of Austin, Texas. Mr. Davis and URS Corporation are experienced in serving as environmental consultants on rail construction projects, and they have been approved by the Board as consultants in such projects. Mr. Davis' address and telephone number are:

Robert Davis
URS Corporation
8501 North Mopac Blvd.
P.O. Box 201088
Austin, TX 78720-1088
512-419-5237

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

The work by URS would be conducted on behalf of the Board pursuant to 49 C.F.R. § 1105.10(d) and the Board's standard requirements for disclosure and a memorandum of understanding to be signed by the Board, ANTR and the third-party consultant. I have enclosed a form of memorandum of understanding among The Board, ANTR and URS that we would propose for your consideration in connection with this project, and a form of disclosure statement that we would propose to require URS to provide to ANTR and to the Board. These conform to what we understand to be the Board's standard memorandum of understanding and disclosure statement in similar projects.

Please contact me if you have any questions or need any additional information.

Sincerely,

Richard A. Allen

Attorney for Alamo North Texas Railroad Company

Enclosures

cc: (w/encl) John E. Skogland, Esq.
Robert Davis

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

January 31, 2001

Mr. Richard A. Allen
Zuckert Scoutt & Rasenberger, L.L.P
888 Seventeenth Street, NW
Washington, DC 20006-3309

Re: Finance Docket No. 34002 - Proposed Rail Line Construction in Wise County, Texas by Alamo North Texas Railroad - Approval of Third Party Consultant

Dear Mr. Allen:

Your letter dated January 25, 2001, requesting approval under 49 CFR 1105.10(d) and 40 CFR 1506.5 for retention of Robert Davis of URS Corporation of Austin, Texas as an independent third-party consultant for this project is approved. Mr. Davis will prepare the appropriate environmental document on behalf of the Surface Transportation Board (Board) in connection with a prospective rail line construction by Alamo North Texas Railroad to construct and operate a rail line southwest of Chico in Wise County, Texas.

We have attached a disclosure statement that we ask you to forward to Mr. Davis to complete. Once the statement is signed by Mr. Davis, we would ask that Mr. Davis send it directly to us. As we discussed, the Board's Section of Environmental Analysis will direct, supervise, review, and approve all environmental documents prepared by the independent third-party consultant.

If we can be of further assistance, please contact me or Dana White of my staff at (202) 565-1552.

Sincerely yours,

for Dana J. White

Elaine K. Kaiser, Chief
Section of Environmental Analysis

Enclosure

ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone [202] 298-8660 Fax [202] 342-0683
www.zsrlaw.com

RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902
raallen@zsrlaw.com

June 26, 2001

BY HAND

Elaine K. Kaiser
Chief, Section of Environmental Analysis
Surface Transportation Board
Room 504
1925 K Street, N.W.
Washington D.C. 20423

Re: Finance Docket No. 34002; Proposed Rail Line Construction in Wise County, Texas by Alamo North Texas Railroad -- Request for Waiver of EIS Requirement

Dear Ms. Kaiser:

This letter is submitted on behalf of Alamo North Texas Railroad Company ("ANTR"), which will soon file a petition for exemption pursuant to 49 U.S.C. § 10502 in the above docket for authority to construct a rail line approximately two miles in length in Wise County, Texas, between a limestone quarry operated by Martin Marietta Materials of Texas ("MMMT"), an affiliate of ANTR, and a connection with the Union Pacific Railroad Company ("UP") for the purpose of providing rail transportation to the quarry and other industries that may wish to use the line. ANTR is a subsidiary of Martin Marietta Materials Southwest, Ltd. and was recently incorporated under the laws of Texas to construct and operate the proposed line.

In connection with this project, my associate, Leon Koutsouftikis, and I met on December 22, 2000 with Ms. White, Ms. Johnson-Ball and Ms. Ghosh of your staff to brief them on the project. By letter dated January 31, 2001, you approved URS Corporation as the Third Party Consultant to assist in the preparation of the environmental documentation, and a Memorandum of Understanding among the STB, URS and ANTR has been executed to govern URS' work. Ms. Jaya Zyman-Ponobshek is the project manager for URS. URS has conducted a site visit and an archeological and biological survey of the site and is in the process of finalizing a first rough draft of an environmental report.

The Board's regulations at 49 C.F.R. 1105.6 generally require the preparation of an Environmental Impact Statement (EIS) for rail construction proposals. However, the regulations

also permit the Chief of the SEA to exercise discretion in determining that a particular proposal is not likely to have significant environmental impact and that, therefore, an Environmental Assessment rather than an EIS may be appropriate documentation for this project. In light of the nature of the project and the preliminary conclusions reached by URS, ANTR requests the Board to determine that ANTR's project is not likely to have a significant environmental impact and that the preparation of an EA would be the appropriate level of environmental review for the proposed project.

The proposed rail line and the MMMT quarry it will serve are in a rural area of Texas southwest of the town of Chico, Texas. The land is primarily pastureland with some brush and wooded areas. There are a number of other quarries in the immediate vicinity, and there are oil and gas wells throughout the area. The line will extend eastward from MMMT's existing quarry approximately two miles to a proposed connection with the UP. It will primarily traverse land leased by MMMT, including a tract on which MMMT plans to develop a new quarry.

MMMT currently transports all its product from its quarry to its customers by truck, almost all of whom are within 70 miles of the quarry. MMMT estimates that, when the rail line is complete, approximately 40 percent of its product will be transported by rail rather than by truck. MMMT projects that, when the rail line is operational, it will be shipping approximately 300 70-car trains a year over the line, or approximately six trains per week.

On the basis of its review to date, URS has developed the following preliminary conclusions with respect to the project:

1) The project is not expected to have any negative land use impacts. Land use along the majority of the proposed new rail line includes the existing stone quarry and/or mixed cropland and pastureland with some timber. There are no churches, schools, or other public gathering places within a half-mile of the proposed rail construction. There are only six homes nearby (four of them mobile homes).
2) To the extent that wages are spent within the local area, the construction phase of the proposed action would positively impact the local economy. The socioeconomic impacts of the operation of the line would be too small to quantify.
3) The project are does not meet environmental justice criteria and therefore the proposed new rail construction does not have a potential to cause disproportionately high and adverse human health or environmental effects on populations in the vicinity of the proposed action.
4) The line crosses only one intermittent stream. However, no construction activities are expected in this stream. No wetlands were identified during the survey.
5) Federally and state listed species of concern are not known to be present in the project area. Therefore, potential impacts to those species are not anticipated.
6) Wise County is within an attainment area for all six criteria NAQQS air pollutants. Since Alamo North proposes to operate substantially fewer than eight train movements a day, no air quality criteria that requires the quantification of air pollutants would be exceeded.

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

7) The proposed rail line will not block any existing public roads. In addition, ANTR indicated that all public grade crossings within the project area would be closed. The Texas department of Transportation has indicated that the proposed line would not interfere with any planned road activities in the area.
8) No sites on or eligible for the NRHP along the ROW were found. Therefore, the proposed action would not negatively impact any cultural resources.
9) There are no public recreation sites within the project area.

On the basis of these conclusions, ANTR respectfully submits that the lack of significant environmental impacts of this project warrant the granting of a waiver of 49 C.F.R. 1105.6 (a) and a preliminary determination that, at this time, an environmental assessment is the sufficient level of environmental documentation for this project. We recognize that such determination would be subject to reevaluation in the event that future findings may indicate that the preparation of an EIS would be warranted.

Please contact me if you have any questions or need any additional information.

Sincerely,

Richard A. Allen

Attorney for Alamo North Texas Railroad Company

cc: John E. Skogland, Esq.
John Houston
Jaya Zyman-Ponebshek

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

July 12, 2001

Mr. Richard A. Allen
Zuckert Scoutt & Rasenberger, L.L.P
888 Seventeenth Street, NW
Washington, DC 20006-3309

Re: Finance Docket No. 34002 - Proposed Rail Line Construction in Wise County, Texas by Alamo North Texas Railroad - Request for Waiver of EIS Requirement

Dear Mr. Allen:

Pursuant to 49 CFR 1105.6(d), we are granting your request of June 26, 2001, for a waiver of 49 CFR 1105.6(a), which generally provides for the preparation of an environmental impact statement for a rail line construction proposal. At this time, we believe that the proposed construction and operation are unlikely to have any significant environmental impact, and therefore, preparation of an environmental assessment is the appropriate level of environmental review.

The project proposed by the Alamo North Texas Railroad Company (ANTR) involves the construction of a rail line approximately two miles in length in Wise County, Texas, from a limestone quarry operated by Martin Marietta Materials of Texas (MMMT), an affiliate of ANTR, eastward to a connection with the Union Pacific Railroad Company (UP). The purpose of the project is to provide rail transportation to the quarry and other industries that may wish to use the line.

You have provided the Section of Environmental Analysis (SEA) with preliminary information about the project as well as possible environmental impacts that may be associated with the proposed construction and operation that would seem to justify the preparation of an environmental assessment rather than an environmental impact statement. Further, as you indicate, staff from URS Corporation, the approved independent third party contractor that has the responsibility of assisting SEA in preparing the environmental analysis and appropriate environmental documents, has visited the project site and conducted an archeological, wetlands and biological survey of the site, and advised us that there do not appear to be significant

environmental issues related to the project.

Based on the information available to date, we believe that the environmental impacts of this project will not be significant and, therefore, an environmental assessment is appropriate in this case. We base our determination on the following:

(1) The project is not expected to have any negative land use impacts. Land use along the majority of the proposed new rail line includes the existing stone quarry and/or mixed cropland and pastureland with some timber. There are no churches, schools, or other public gathering places within a half-mile of the proposed rail construction. There are six homes near the proposed rail line construction.

(2) The socioeconomic impacts of the operation of the line would be too minimal to quantify. However, to the extent that wages are spent within the local area, the construction phase of the proposed action would positively impact the local economy.

(3) The project area does not meet environmental justice criteria and therefore the proposed new rail construction does not have a potential to cause disproportionately high and adverse human health or environmental effects on populations in the vicinity of the proposed action.

(4) The line crosses only one intermittent stream. No construction activities are expected in this stream. No wetlands were identified during the survey.

(5) No federally and state listed species of concern were identified in the project area as a result of the biological survey. Therefore, potential impacts to those species are not anticipated.

(6) Wise County is within an attainment area for all six criteria NAQQS air pollutants. Since Alamo North proposes to operate substantially fewer than eight train movements a day, no air quality criteria requiring the quantification of air pollutants would be exceeded.

(7) The proposed rail line will cross only one road, which will likely be closed in the near future. In addition, ANTR indicated that all public grade crossings within the project area would be closed. The Texas Department of Transportation has indicated that the proposed line would not interfere with any planned road activities in the area.

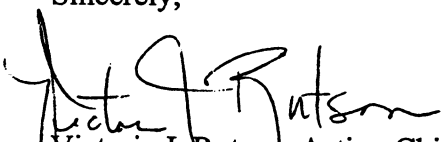
(8) No sites on or eligible for the National Register of Historic Places along the right-of-way were found. Therefore, the proposed action would not negatively impact any cultural resources.

(9) There are no public recreation sites within the project area.

Accordingly, based on the currently available information, preparation of an environmental assessment rather than an environmental impact statement is warranted in this case at this time. As discussed above, the environmental impacts of this project are unlikely to be significant and can be addressed through appropriate mitigation measures.

After the environmental assessment is prepared, it will be made available for public review and comment. The Surface Transportation Board then will consider the environmental assessment, the public comments, and any post environmental assessment recommendation of SEA before making its final decision in this proceeding. Of course, should the environmental assessment process disclose unanticipated impacts that are significant, we will require the preparation of an environmental impact statement at that time. If you have any questions, please do not hesitate to contact me or Rini Ghosh of my staff at (202) 565-1539.

Sincerely,



Victoria J. Rutson, Acting Chief
Section of Environmental Analysis

cc: Jaya Zyman-Ponebshek, URS Corporation

ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone (202) 298-8660 Fax (202) 342-0683
www.zsrlaw.com

RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902
raallen@zsrlaw.com

July 26, 2001

BY HAND

Elaine K. Kaiser
Chief, Section of Environmental Analysis
Surface Transportation Board
Room 504
1925 K Street, N.W.
Washington D.C. 20423

Re: Finance Docket No. 34002; Proposed Rail Line Construction in Wise County, Texas by Alamo North Texas Railroad -- Request for Focused Review of the Proposed Route

Dear Ms. Kaiser:

This letter is submitted on behalf of Alamo North Texas Railroad Company ("ANTR"), which will soon file a petition for exemption pursuant to 49 U.S.C. § 10502 in the above docket for authority to construct a rail line approximately two miles in length in Wise County, Texas, between a limestone quarry operated by Martin Marietta Materials of Texas ("MMMT"), an affiliate of ANTR, and a connection with the Union Pacific Railroad Company ("UP") for the purpose of providing rail transportation to the quarry and other industries that may wish to use the line. ANTR is a subsidiary of Martin Marietta Materials Southwest, Ltd. and was recently incorporated under the laws of Texas to construct and operate the proposed line.

By letter dated July 12, 2001, SEA granted ANTR's request for waiver of 49 C.F.R. § 1105.6(a), which generally provides for the preparation of an environmental impact statement for rail line construction proposals; you concluded that an environmental assessment ("EA") is the appropriate level of environmental review for this project.

This letter requests, for the reasons set forth below, that SEA limit detailed review in the EA to the proposed route indicated on the map attached to this letter as Exhibit 1.

The proposed rail line is intended to serve a limestone quarry of MMMT located southwest of the town of Chico, Texas through a connection with a nearby UP line. As shown on Exhibit 1, the line will traverse two parcels of property leased by MMM Southwest, Ltd. for

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

all but a short section of the route. The proposed route is the shortest route that would serve both parcels and be within property leased by MMM Southwest, Ltd. MMMT is currently conducting quarrying operations on the westernmost parcel, and it intends to develop the other parcel for future operations.

Other routes are possible, but all of them would be longer than the proposed route and none of them would have any environmental advantages over the proposed route. As noted in SEA's July 12, 2001 letter, the proposed line will be through largely uninhabited land used primarily for quarrying, pasture and timber and will not likely have any significant environmental impacts. Accordingly, other routes would not serve to avoid any anticipated environmental impacts.

Furthermore, the proposed route, by closely following the northern boundry of the eastern parcel, has the advantage of minimizing interference with quarrying operations. Other routes that would bisect the parcel would interfere much more with quarrying operations.

In sum, we believe that the proposed route clearly will have the least environmental impact and will be most cost effective. We therefore request that SEA designate, as the preferred route for detailed EA study, the route indicated on the attached map.

Please contact me if you have any questions or need any additional information.

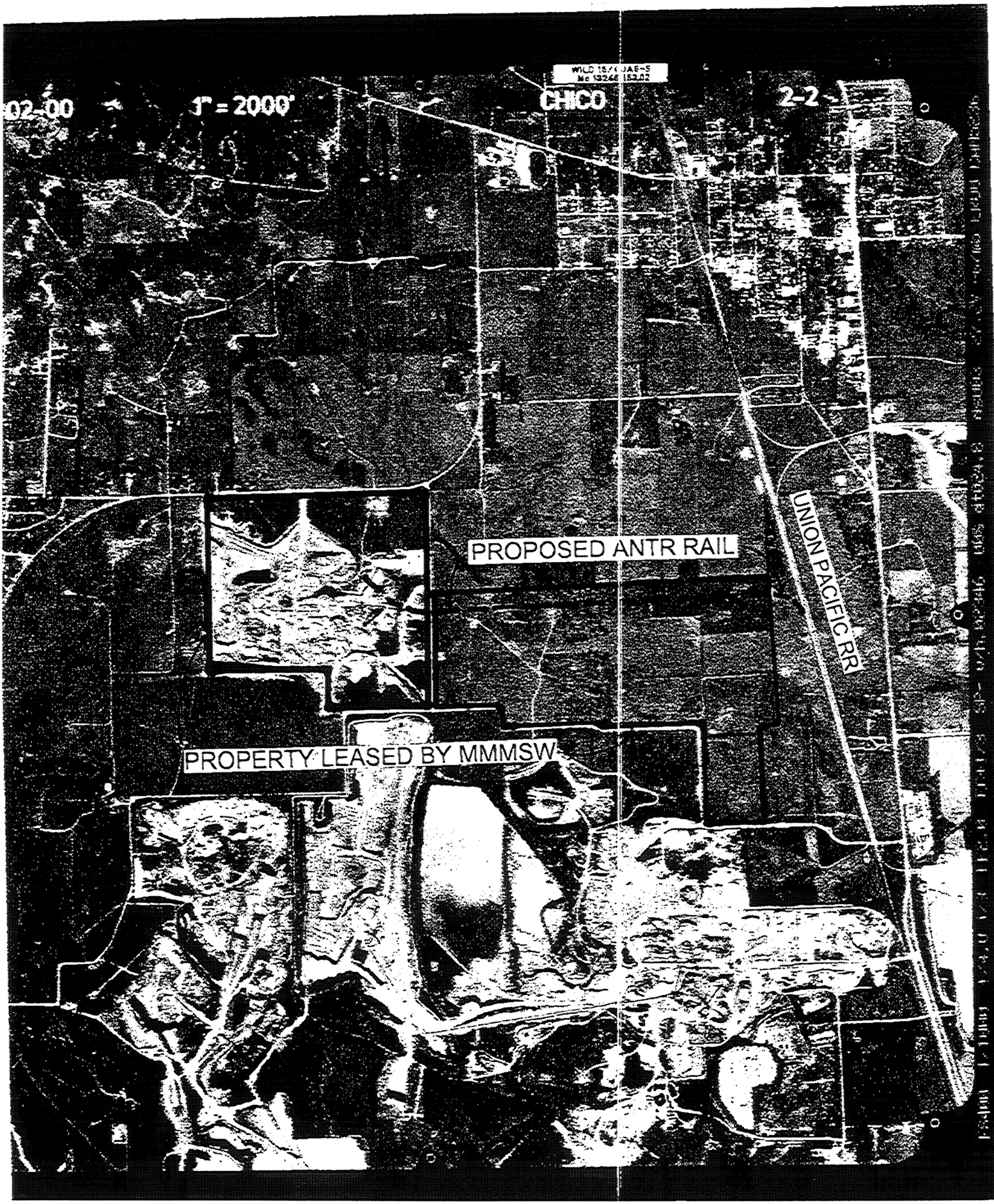
Sincerely,

Richard A. Allen

Attorney for Alamo North Texas Railroad Company

cc: John E. Skogland, Esq.
John Houston
Jaya Zyman-Ponebshek

EXHIBIT 1


1" = 2000'
CHICO
PROPOSED ANTR RAIL
UNION PACIFIC RR
PROPERTY LEASED BY MMMSW

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

August 8, 2001

Mr. Richard A. Allen
Zuckert Scoutt & Rasenberger, L.L.P
888 Seventeenth Street, NW
Washington, DC 20006-3309

Re: Finance Docket No. 34002 - Proposed Rail Line Construction in Wise County, Texas by Alamo North Texas Railroad - Request for Focused Review of the Proposed Route

Dear Mr. Allen:

This responds to your letter dated July 26, 2001, in which you request that an in-depth environmental analysis be prepared only for the applicant's preferred route. Based on the information available at this time and considering the factors discussed below, the Section of Environmental Analysis (SEA) is granting your request.

Based on a careful review of the proposal, consultation with representatives from URS Corporation, the independent third party contractor retained to assist SEA in the environmental review process, and yourself as the applicant's representative, and consideration of all the material to date, SEA has determined that the environmental assessment will perform an in-depth environmental analysis only for Alamo North Texas Railroad Company's (ANTR) preferred route.

The project proposed by ANTR involves the construction of a rail line approximately two miles in length in Wise County, Texas, from a limestone quarry operated by Martin Marietta Materials of Texas (MMMT), an affiliate of ANTR, eastward to a connection with the Union Pacific Railroad Company. The purpose of the project is to provide rail transportation to the quarry and other industries that may wish to use the line.

ANTR's preferred route appears to be the most viable option for the project. As you state in your letter, the preferred route is the shortest route. Other possible routes are longer and have no apparent environmental advantages over the proposed route. All routes considered appear to have similar environmental impacts, though the other routes would interfere more with the

proposed quarry operations and, because of their longer lengths, could have somewhat greater environmental impacts than the proposed route. As you state in your letter, the proposed route minimizes interference with quarrying operations by following the northern boundary of the eastern parcel of land leased by MMMT. Additionally, the proposed route supports the greatest access to Dvorken reserves, which is the area for the proposed new quarry, and it places the track in close proximity to crushing operations. Also, the other routes would present economic or physical obstacles, making the proposed route the most cost effective. However, the environmental assessment will include a discussion of all alternatives considered, including the no action alternative. If circumstances change, we may need to reconsider the depth of the analysis for these alternatives.

Accordingly, SEA agrees to ANTR's request that SEA designate ANTR's preferred route for detailed analysis in SEA's environmental assessment.

If you have any questions, please do not hesitate to contact me or Rini Ghosh of my staff at (202) 565-1539.

Sincerely,

Victoria J. Rutson, Chief
Section of Environmental Analysis

cc: Jaya Zyman-Ponebshek, URS Corporation

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ATTORNEYS AT LAW

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RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902
raallen@zsrlaw.com

August 28, 2001

BY HAND

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington D.C. 20423

Re: Finance Docket No. 34002; Petition of Alamo North Texas Railroad For An Exemption Under 49 U.S.C. § 10502 from the Requirements of 49 U.S.C. § 10901

Dear Mr. Williams:

I enclose for filing an original and 10 copies of a Petition of Alamo North Texas Railroad Corporation for An Exemption Under 49 U.S.C. § 10502 From the Requirements of 49 U.S.C. § 10901, together with a check for $51,500.00 for the filing fee. The enclosed petition seeks authority to construct and operate a new common carrier railroad line in Wise County, Texas approximately two miles in length. I and the third-party contractor engaged to assist with the environmental review and documentation, URS Corporation, have been in communication with the Board's Section of Environmental Analysis regarding this matter for some time.

Sincerely,

Richard A. Allen

Attorney for Alamo North Texas Railroad Company

cc: (w/encl.) Ms. Victoria J. Rutson, Room 504
John E. Skogland, Esq.
Jaya Zyman-Ponebshek

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34002

ALAMO NORTH TEXAS RAILROAD, CONSTRUCTION
AND OPERATION IN WISE COUNTY, TX

PETITION OF ALAMO NORTH TEXAS RAILROAD CORPORATION
FOR AN EXEMPTION UNDER 49 U.S.C. § 10502 FROM
THE REQUIREMENTS OF 49 U.S.C. § 10901

Richard A. Allen
Zuckert Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Washington, D.C. 20006
(202) 298-8660

Attorney for
Alamo North Texas Railroad Corporation

Dated: August 28 , 2001

MMM Southwest currently uses trucks to transport stone from its quarry to customers in the Dallas-Ft. Worth area. Construction and operation of the Line will enable this quarry to extend its market reach significantly beyond the 50-to-75 mile radius that defines the practical limits of truck transportation of stone products, and will enable it to compete in the Houston market and other markets throughout east Texas. Construction and operation of the Line will also enable MMM Southwest to serve some of its existing customers by rail and thus more efficiently and economically. Alamo North will hold itself out to the public as a common carrier and will be available to serve other existing quarries in the area as well as any other industries that may locate in the area in the future.

Alamo North requests the Board to exercise its power under 49 U.S.C. § 10502 to exempt the proposed construction and operation of the Line from the requirements of 49 U.S.C. § 10901. The proposed construction and operation should be exempted because they will clearly promote the goals of the rail transportation policy and the application of § 10901 is not needed to carry out that policy in this case. Furthermore, the transaction is of limited scope, and regulation is not necessary to prevent market abuses. Exemption of the construction and operation is also consistent with many decisions of the Board and its predecessor, the Interstate Commerce Commission ("ICC") exempting similar projects.

Expedited action is requested on this petition to permit construction of the Line to commence as soon as possible. If all necessary environmental reviews have not been completed when this petition is ripe for disposition, Alamo North also requests that the Board conditionally grant this petition, subject to the issuance of a final decision after completion of all environmental reviews.

FACTS

Alamo North is a recently formed Texas railroad corporation and is a subsidiary of MMM Southwest, a Texas limited partnership.[1] MMM Southwest produces aggregates from quarries in the southwestern United States, including limestone aggregates from its quarry in Chico, Texas, which is in Wise County about 50 miles northwest of Ft. Worth. As explained in the attached verified statement of Bruce A. Vaio, President of Alamo North, Alamo North proposes to build and subsequently operate a common carrier line of railroad to serve the Chico quarry. The Line will be approximately two miles in length. A map showing the proposed right-of-way is attached as Exhibit No. 1 hereto. All but a few hundred yards of the right-of-way is currently owned or leased by MMM Southwest and UP. Alamo North intends to acquire these few hundred yards, or an easement over them, by purchase or by eminent domain, pursuant to authority granted to it by Texas law.

As noted, the Line is being constructed primarily to serve the MMM Southwest stone quarry in Chico, Texas. It will also be available to serve any other industries that may locate in the future on the Line. MMM Southwest's quarry has been in operation for 14 years, and it produces limestone, which is an important material for road and other construction projects. To

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[1] MMM Southwest owns 995 of 1000 shares of common stock of Alamo North, the remaining five other shares being held as director qualifying shares by the five directors of Alamo North as required by Texas law. MMM Southwest, a successor at law to Redland Stone Products Company, is a wholly owned subsidiary of Martin Marietta Materials, Inc.. MMM Southwest is also the parent of another wholly-owned short line railroad, the Alamo Gulf Coast Railroad, which operates some five miles of rail line primarily serving MMM Southwest's Beckmann quarry in San Antonio, Texas. Upon the commencement of rail operations over the Line at issue here by Alamo North, MMM Southwest will control two class III rail carriers whose lines are not connected to each other. MMM Southwest will file (continued...)

date, all of the quarry's product has been trucked from the quarry to customer locations, primarily in the Dallas-Ft. Worth area. Truck transportation of stone products, however, becomes increasingly inefficient and uneconomical for distances much over 50 miles. Ninety percent of the quarry's customers are within 70 miles of the quarry.

The principal purpose of the proposed Line is to enable MMM Southwest to sell aggregates produced at the Chico quarry beyond its present market in the Dallas-Ft. Worth area and to reach other markets in east Texas, including the Houston market. MMM Southwest also intends to use the Line to serve some of its existing customers by rail, which will be far more efficient and economical than by truck. It will be able to deliver to those customers not only limestone from its Chico quarry but also sand and other products, which it will be able to backhaul from Houston and other locations in cars used for outbound movements of limestone.

MMM Southwest is in the process of adding new equipment at the Chico quarry that will increase the production capacity of the quarry. MMM Southwest estimates that, when the rail line is complete, approximately 40 percent of its product will be transported by rail rather than by truck. It projects that, when the rail line is operational, it will be shipping approximately 300 70-car trains a year over the line, or approximately six trains per week.

Construction of the Line will be financed by an affiliate of Alamo North using internally generated funds.

Alamo North does not anticipate that the project will present any significant environmental or historic impact issues. The Line will be in a rural area consisting primarily of pastureland with some brush and wooded areas. There is also extensive mining and oil and gas

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(...continued)
a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to exempt such acquisition of (continued...)

production throughout the area. Most of the right-of-way will be on land leased by MMM Southwest, including a tract on which MMM Southwest plans to develop a new quarry. The Line will not traverse any environmentally sensitive features, such as residential or recreational areas or habitats of species of concern. Only one small drainage feature, with intermittent seasonal flow, would be crossed. Alamo North knows of no public opposition to the project. The net effect of the operation of the Line should be to reduce the use of trucks to transport stone, thereby reducing highway congestion, fuel use and the other environmental impacts that attend truck transportation of heavy bulk products.

Pursuant to 49 C.F.R. § 1150.10(d), Alamo North intends to use a third-party consultant to prepare any necessary environmental documentation. Counsel for Alamo North have met with the staff of the Board's Section of Environmental Analysis ("SEA") to discuss this project, and SEA has selected and entered into an agreement with URS Corporation to assist it in performing the required environmental and historic reviews.

ARGUMENT

Under 49 U.S.C. § 10901, a person may construct and operate a railroad line only if the Board authorizes such activity. Section 10901 and the regulations promulgated thereunder establish potentially complex and time-consuming procedures for obtaining such authorization. The Board, however, can exempt rail constructions and operations from the § 10901 requirements pursuant to 49 U.S.C. § 10502, and the Board and the ICC have uniformly done so

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(...continued)
control from the requirements of 49 U.S.C. § 11323.

for short rail construction projects of this kind, subject to the required environmental and historical review.

Section 10502, as relevant to this petition, provides as follows:

> (a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the Board, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part –
>
> (1) is not necessary to carry out the transportation policy of section 10101 of this title; and
>
> (2) either –
>
> (A) the transaction or service is of limited scope; or
>
> (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

The proposed construction and operation described in this petition for exemption satisfies the § 10502 criteria.

First, the Line is subject to § 10901 because it will be used in common carrier service. Alamo North will hold out its service to the public. In so doing, Alamo North will be a common carrier, defined by the Interstate Commerce Commission Termination Act of 1995 ("ICCTA") as "a person providing common carrier railroad transportation for compensation." 49 U.S.C. § 10101(5); see also, e.g., Lone Star Steel Co. v. McGee, 380 F.2d 640, 657 (5th Cir), cert. denied, 389 U.S. 977 (1967); Paducah & Illinois R.R. Co., STB Finance Docket No. 33362, 1997 STB LEXIS 204 at *5, n.7 (served Aug. 25, 1997); Association of P&C Dock Longshoremen v. Pittsburgh and Conneaut Dock Co., 8 I.C.C.2d 280 (1992).

Second, application of § 10901 is not necessary to carry out the transportation policy, as stated in 49 U.S.C. § 10101, thus obviating the need for regulation. On the contrary, the

proposal will create additional transportation facilities and options, and it presents no threat to competition or risk of harm to shippers. Accordingly, exempting the proposal from § 10901 will clearly promote the rail transportation policy, because it will help "to ensure the development . . . of a sound rail transportation system," "to foster sound economic conditions transportation and to ensure effective competition . . . between rail carriers and other modes," and "to reduce regulatory barriers to entry into . . . the industry." 49 U.S.C. §§ 10101 (4), (5) and (7). For these reasons, the Board and the ICC have consistently exempted the construction and operation of new short common carrier rail lines, finding the application of § 10901 to such projects not necessary to carry out the national rail transportation policy. See, e.g., Entergy Arkansas and Entergy Rail—Construction and Operation Exemption—White Bluff to Pine Bluff, AR, STB Finance Docket No. 33782, 2000 STB LEXIS 248 at *6 (served May 4, 2000); Southern Elec. R.R. Co.—Construction and Operation Exemption—West Jefferson, AL, STB Finance Docket No. 33387, 1997 STB LEXIS 154 at *5 (served July 16, 1997); WFEC R.R. Co. – Construction and Operation Exemption – Choctaw and McCurtain Counties, OK, Finance Docket No. 32607, 1995 ICC LEXIS 34, at *3 (served Feb. 27, 1995); Mokena Illinois R.R. Co. – Construction Exemption – Will County, IL, Finance Docket No. 31680, 1990 ICC LEXIS 314, at *2 (served Sept. 19, 1990).

Third, the proposed transaction is limited in scope and regulation is not needed to protect shippers from the abuse of market power. The Line that Alamo North proposes to construct and operate is only approximately three miles long and will be located in a rural area of Texas. Similar rail construction projects have been found to be limited in scope. See, e.g., WFEC, 1995 ICC LEXIS 34, at *1 (14-mile rail line limited in scope); MoKena Illinois R.R. Co., 1990 ICC LEXIS 314, at *1 (less than one mile of railroad).

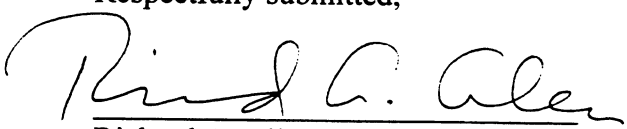
In sum, the Board should exempt the proposed construction and operation of the Line from the requirements of § 10901 because the proposal will clearly promote the national rail transportation policy by providing MMM Southwest with new rail transportation options, presents no threat of abuse of market power and is of limited scope.

If all required environmental and historic reviews are not completed when this petition is otherwise ripe for disposition, Alamo North also requests the Board to grant the petition for exemption conditionally, subject to the issuance of a final decision upon the completion of such reviews. A conditional exemption is requested to permit Alamo North as soon as possible to commence the process of acquiring the right of way and to take other actions preparatory to commencing construction. The Board has granted conditional exemptions in each of the construction and operation exemption cases cited earlier, and the same considerations should lead it to do the same here.

CONCLUSION

The Board should exempt Alamo North Texas Railroad Company from the requirements of 49 U.S.C. § 10901 in connection with its construction and operation of the three-mile line of railroad in Wise County, Texas described in this petition.

Respectfully submitted,



Richard A. Allen
Zuckert Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Washington, D.C. 20006
(202) 298-8660

Attorney for
Alamo North Texas Railroad Corporation

August 28, 2001

VERIFIED STATEMENT

OF

BRUCE A. VAIO

My name is Bruce A. Vaio. I am the President of the Alamo North Texas Railway ("Alamo North"). I am submitting this statement in support of the petition for exemption Alamo North is filing with the Surface Transportation Board in Finance Docket No. 34002 to authorize Alamo North to construct and operate a line of railroad approximately two miles in length in Wise County, Texas.

Alamo North is a recently formed Texas railroad corporation. It is a subsidiary of Martin Marietta Materials Southwest, Ltd. ("MMM Southwest"), a Texas limited partnership. I also serve as President and Chief Executive Officer of MMM Southwest. My business address is 11467 Huebner, Suite 300, San Antonio, TX 78230.

MMM Southwest and its subsidiaries produce aggregates from quarries in the southwestern United States. One of MMM Southwest's quarries is near Chico, Texas, which is about 50 miles north of Ft. Worth, Texas. This quarry has been in operation for 14 years. The limestone aggregates produced at the quarry are an important material for highway and other construction projects. To date, the quarry's entire product has been transported by trucks to customer locations, which are primarily in the Dallas-Ft. Worth area. However, truck transportation of aggregates becomes increasingly inefficient and uneconomical for distances above 50 miles. Ninety percent of the Chico quarry's customers are within 70 miles of the quarry.

Alamo North was recently formed for the purpose of constructing and operating a line of railroad to transport aggregates from the Chico quarry to a connection with the Union Pacific

Railroad ("UP"), approximately two miles from the quarry. This will enable MMM Southwest to sell its product beyond its present market in the Dallas-Ft. Worth area and to reach other markets, including the Houston market. It will also enable MMM Southwest to serve some of its existing customers by rail, which will be much more efficient and economical than serving them by truck. MMM Southwest will also be able to deliver to its customers not only limestone from the Chico quarry but also sand and other products, which it will be able to backhaul in cars used for outbound movements of limestone. Alamo North intends to be a common carrier holding itself out to the public to provide rail service, and it will be available to serve any other quarries or industries that may locate on or near its line in the future.

MMM Southwest is in the process of installing new equipment that will increase the production capacity of the Chico quarry, and it also plans to develop a new quarry on leased property adjacent to the existing quarry, which the proposed rail line will traverse. I estimate that, when construction of the rail line is complete, Alamo North will carry 40 percent of the output of the two quarries. This will amount to about 300 70-car trains a year, or approximately six trains a week.

I do not expect that construction and operation of the proposed line will present any significant environmental or historic impacts, and I am not aware of any public opposition to the project. The line will traverse a rural area, mainly pastureland with some brush and woods, in which there is already extensive mining and oil and gas production. The line will not traverse any sensitive environmental features, such as residential or recreational areas or habitats of species of concern. The net effect of the rail operations will be to reduce the use of trucks to transport the aggregates produced by MMM Southwest, which will reduce highway congestion and fuel use. The STB's Section of Environmental Analysis and Alamo North have entered into

an agreement with a third-party environmental consultant, URS Corporation, to prepare all necessary environmental analysis and documentation.

The route of the proposed rail line is the shortest route between the existing quarry and the UP line. The route will run along the northern border of property leased by MMM Southwest, on which MMM Texas plans to develop the new quarry. Alternative routings of the line are possible, but they would be longer than the proposed route, would interfere more with the proposed quarry operations and would, if anything, have greater environmental impacts than the proposed route.

VERIFICATION

I, Bruce A. Vaio, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 31st day of August, 2001.

Bruce A. Vaio

EXHIBIT 1


2-00
1" = 2000'
N
CHICO
2-2
PROPOSED ANTR RAIL
UNION PACIFIC RR
PROPERTY LEASED BY MMMSW

Appendix G

List of Preparers

List of Preparers

Surface Transportation Board

Section of Environmental Analysis:

Victoria Rutson	Chief, Section of Environmental Analysis
Dana White	Environmental Protection Specialist
Rini Ghosh	Attorney-Adviser

Third-Party Consultant

URS Corporation, Austin, Texas

Jaya Zyman-Ponebshek	Project Manager, Air, Water, Waste, Noise, Traffic
Jason Sheeley	Environmental Justice, Socioeconomics, Mapping
Donald Spires	Biology/Archeology